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# A Closer Look At "Right to Work" Legislation

By Edwin R. Teple

THERE HAS been much concern of late with the right to work. References to this right, however, go well back into our history, and within more recent memory it has been mentioned as one of the things the free world was fighting for during the last great war. As one aspect of the freedom of the individual, it is likely to have many applications.<sup>1</sup> At the outset, therefore, it should be explained that this paper is concerned solely with a limited aspect of the subject — governmental regulation of

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compulsory unionism. The so-called "right to work" laws,<sup>2</sup> to which most of the recent interest has been confined, are simply provisions designed to out-

law efforts to make union membership a condition of getting or holding a job.<sup>3</sup> It is possible, at

<sup>1</sup>There is no express reference to such a right in the United States Constitution, although occasionally writers speak of it as though there had been. See, McClain, *The Union Shop Amendment: Compulsory "Freedom" To Join a Union*, 42 A.B.A.J. 723 (1956).

The right to work has been referred to as one of the aspects of "liberty," within the due process clause of the Fifth Amendment, and has been mentioned in connection with the "equal protection" clause of the First Amendment. These references have been made in connection with such subjects as monopoly, *Butchers' Union Company v. Crescent City Company*, 111 U.S. 746, 762 (1884); limitations upon the employment of aliens, *Truax v. Raich*, 239 U.S. 33, 41 (1915); state control of the manufacture of oleomargarine, *Powell v. Pennsylvania*, 127 U.S. 678, 684 (1888); and the right of Chinese laundrymen to pursue their business in the city of San Francisco, *Yick Wo v. Hopkins* 118 U.S. 356 (1886).

Another contemporary author has pointed out that the only major world power which explicitly mentions the "right to work" in its constitution is the Soviet Union. Gilbert, *The Right to Work Revisited: A Reply to Dean Joseph A. McClain*, 43 A.B.A.J. 231, 286 (1957).

References to the right to work are much like those frequently made to the right of association, which is also discussed at some length by J. A. McClain, Jr. in his article, *supra*. Actually, there is no express reference to such a right in the constitution either, it usually being assumed that this is inherent in the right "peaceably to assemble." For an analysis of the right of association, see Wyzansky, *The Open Window and the Open Door: An Inquiry Into Freedom of Association*, 35 CALIF. L. REV. 336 (1947).

No hint of constitutional origin is contained in the so-called "right to work"

this time, to examine some of the applications and interpretations of these provisions.

### THE HISTORY OF UNION SECURITY

In order to better understand this counter-revolution, and its implications, a brief discussion of the object of the attack should be of assistance.

Compulsory unionism refers to practices designed to achieve "union

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laws themselves. For instance, 2C N.C. GEN. STAT. 95-78, (1950), contains the following:

"The right to live includes the right to work. The exercise of the right to work must be protected and maintained free from undue restraints and coercion. It is hereby declared to be the public policy of North Carolina that the right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization or association."

<sup>2</sup> Of the 19 states which now have "right to work" provisions, either in statutory or constitutional form, 11 are in the South, in a solid line from Virginia to Texas. All but one of the remainder are non-industrial states in the west. This particular type of provision originated in the state of Florida in 1944.

It is well known that the National Association of Manufacturers and the United States Chamber of Commerce have been actively supporting "right to work" legislation, but it is reported that very few of the large corporations have taken a position one way or the other. *Fortune*, Sept. 1957, p. 236. According to this report, lobbying in state legislatures for these laws is chiefly being pushed by small business and farm organizations, particularly the American Farm Bureau Federation.

<sup>3</sup> The labor movement is constantly seeking to expand its membership and influence, partly as a means of self protection. By opposing legislations of this type, with this name attached, the unions have been placed, in the minds of some, in a position of opposing this time honored "right."

Lest anyone be led to ascribe nothing but selfish or improper motives to organized labor in general, it should be pointed out that the social insurance programs, such as old age and survivor's insurance, workmen's compensation, unemployment insurance and the like, invariably have the unions among their strongest and most outspoken advocates, notwithstanding the fact that such programs apply with equal force to all working people and their families, without regard to membership in the union. The same may be said for legislation in the areas of fair employment practices, child labor, fair labor standards, factory inspection, public assistance, public housing and the like, all of which directly affect the welfare of the individual. Without rancor, it may be noted that the same can hardly be said of many of the opponents of compulsory unionism.

The history of the labor movement is well known and certainly may be said to have achieved respectability under modern law. See, Tobriner, *The Labor Union: Public Utility of Labor Relations*, 43 A.B.A.J. 805 (1957). Basically, it is an effort on the part of working people, by joining together, to advance their interests and to secure the rights to which they feel they are entitled. As the United States Supreme Court said in *Railway Employees' Department, AFL v. Hanson*, 351 U.S. 225 (1956), "One would have to be blind to history to assert that trade unionism did not enhance and strengthen the right to work."

It is well known, of course, that one of the primary concerns of most unions is the rate to be paid for work performed. That this is a very pertinent phase of the subject will become apparent upon reflection, since the right to work would be rather hollow if no pay, or an inadequate return, were forthcoming.

security." Included within this term are the provisions frequently incorporated in collective bargaining agreements which have as their object the strengthening of the union's position with respect to (a) employers, (b) other unions, and (c) workers without union affiliation. The most common provisions of this type are: (1) the closed shop,<sup>4</sup> (2) the union shop,<sup>5</sup> (3) the preferential shop,<sup>6</sup> and (4) maintenance of membership.<sup>7</sup>

The history of this aspect of the American labor movement, which seems to have no counterpart as an issue in other countries,<sup>8</sup> goes back to the early part of the last century.<sup>9</sup> At first the courts refused to give legal sanction to union security provisions. Typical of the early common law was the decision of the Supreme Judicial Court of Massachusetts in *Berry v. Donovan*,<sup>10</sup> in which a shoemaker, who had refused to join the union, brought an action for damages for malicious interference with his contract of employment. The court held that the plaintiff had a primary right to be undisturbed in the benefit and performance of his contract of employment, and that the intentional interference with such right without lawful justification was malicious in law, even though the motives for such interference were understandable and without express malice. In matters of this kind, the court said, the law does not tolerate monopolies and the attempt to force all laborers to combine in unions is against the policy of the law. However, most of the early decisions in this mold have

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<sup>4</sup>The employer contracts not to hire anyone except members of the particular union, and to discharge any employee who does not remain a union member in good standing throughout the life of the agreement. Most of these provisions require the employer to hire through the union unless suitable workmen cannot be furnished in this manner within a specified period, in which case the worker hired elsewhere must join the union before starting to work.

<sup>5</sup>Under this type of provision, the employer may hire workers on the open market but all new employees must join the union within a specified period, frequently 30 days, and must continue their membership in good standing throughout the life of the agreement.

<sup>6</sup>Preference is to be given to union members in hiring workers. The employer is free to hire workers on the open market only if the union fails to supply suitable workers within a specified period.

<sup>7</sup>Under this type of provision, membership in the union is not required of new employees; they may join or not, as they prefer. Once they do join, however, they must maintain their union membership in good standing for the life of the agreement, although occasionally an "escape clause" is included which permits withdrawal at certain specified times.

<sup>8</sup>Although the union shop has been tacitly accepted by European employers and has been traditional with European workers as far back as the early Guilds, the issue has not been an important one. MATHEWS, LABOR RELATIONS AND THE LAW 449 (1953).

<sup>9</sup>*Id.* at 449-452.

<sup>10</sup>188 Mass. 353, 74 N.E. 603 (1905).

since been overruled, and the modern judicial view has been that such provisions are enforceable.<sup>11</sup>

In the original National Labor Relations Act, Congress recognized and approved union security provisions at least in principle.<sup>12</sup> This policy was partially changed, however, amid much furor and public debate, by the enactment in 1947 of extensive amendments, popularly known as the Taft-Hartley Act. Under the present language of the law, now known as the Labor Management Relations Act, the closed shop has, in effect, been outlawed; but the union shop and lesser forms of union security were permitted to remain.<sup>13</sup>

The history of union security provisions under the Railway Labor Act is somewhat in reverse. Such provisions were expressly forbidden by the 1934 amendments to that Act.<sup>14</sup> In 1951, however, the Act was further amended to permit the inclusion of union shop and check-off provisions in collective bargaining agreements thereunder.<sup>15</sup>

#### STATE LEGISLATION BANNING UNION SECURITY PROVISIONS

It was Section 14 (b) of the Taft-Hartley Act which opened the door to the enactment of the state "right to work" laws.<sup>16</sup> By this means the subject of compulsory unionism became one which the states may regulate concurrently with the Federal government, notwithstanding the fact

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<sup>11</sup> See, for instance, *Hamer v. Nashawena Mills, Inc.*, 315 Mass. 160, 52 N.E. 2d 22, (1943), in which the court said: "The validity of a closed shop agreement, if freely and voluntarily made primarily for the mutual advantage of the parties, has always been upheld and enforced even if the opportunity for securing employment by other workmen, not members of the contracting union may thereby be greatly restricted or practically destroyed. Such an agreement has been recognized as a legitimate means which a labor union may employ to secure for its members all the work of their employers that they are competent to perform." Notwithstanding this recognition, some courts still hold that concerted activity to obtain such a provision is illegal and can be enjoined. See, *Fashioncraft, Inc. v. Halpern*, 313 Mass. 385, 48 N.E. 2d 1 (1943).

<sup>12</sup> See § 8 (3) of the Wagner Act as enacted in 1935, 49 STAT. 449 (1935).

<sup>13</sup> The sections involved are 8 (a) (3), 8 (b) (1) proviso, 8 (b) (2) and 9 (e), 61 STAT. 136 (1947), 29 U.S.C., §§ 158, 159 (1953).

<sup>14</sup> At the request of the unions themselves, apparently because of their fears that company-dominated organizations would threaten the existence of independent, bona fide unions. See, MATHEWS, *LABOR RELATIONS AND THE LAW*, 475 (1953); *Hudson v. Atlantic Coast Line*, 242 N.C. 650, 89 S.E. 2d (1955).

<sup>15</sup> 64 STAT. 1238 (1951), 45 U.S.C. § 152 (1953).

<sup>16</sup> The language of the Section is as follows: "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 (1947), 29 U.S.C., § 164 (b) (1952).

that such regulations may affect interstate commerce or may limit unions more drastically than the Federal law.<sup>17</sup>

Since the enactment of Section 14 (b), 18 states have adopted provisions outlawing some or all of the union security provisions in collective bargaining agreements, by constitutional amendment, or statute, or a combination of the two.<sup>18</sup>

The objectives of those who have supported legislation of this type have been the subject of some rather interesting speculation.<sup>19</sup> A recent survey, however, tends to indicate that the results have been somewhat less than earth shaking.<sup>20</sup> In at least one state, the desired result seems

<sup>17</sup> HR REP. No. 510, 80th Cong., 1st Sess. 61 (1947); HR REP. No. 245, 80th Cong., 1st Sess. 54 (1947).

<sup>18</sup> ALA. CODE, tit. 26 §§ 375 (1) to 375 (7) (1940); ARIZ. CONST., art. II § 35 and ARIZ. CODE, §§ 56-1301 to 56-1308 (1956); ARK. CONST., amend XXXIV and ARK. STAT., §§ 81-201 to 81-205 (1947); GA. CODE, §§ 54-901 to 908, and 9922 (1935); Ind. Laws of 1957, digested at Par. 41,025, CCH LAB. L. REP. (1957); IOWA CODE, §§ 736 A.1 to .8 (1949); LA. REV. STAT., §§ 1 to 12, since repealed, effective 20 days after the 1956 regular session of the General Assembly, leaving only a limited statute applying to agricultural workers (CCH LAB. L. REP. Weekly Summary No. 413, 6/28/56); MISS. CODE, §§ 6984.5 (a) to (h) (1942); NEB. CONST., art. 15, §§ 13 to 15 and NEB. REV. STAT., §§ 48-217, to 48-219 (1943); NEV. COMP. LAWS, § 10473 (1949); N.C. GEN. STAT., Div. XIII, c. 95, §§ 95-78 to 95-84 (1950); N.D. REV. CODE, § 34-0114 (1943); S.C. CODE, tit. 40, §§ 40-46 to 40-46.11 (1952); S.D. CONST. art VI, § 2, 2nd S.D. Laws 1947 c. 92; TENN. CODE, §§ 50-208 to 50-212 (1955); TEX. REV. CIV. STAT. art. 5207 (a), §§ 1 to 5 (1948); UTAH CODE, §§ 1 to 18 (1953); VA. CODE, §§ 40-68 to 40-74.5 (1950).

Florida amended its constitution in 1944 to insert a provision of this type in Section 12 of the Declaration of Rights, and thus preceded the enactment of Section 14 (b) of the L.M.R.A. At the present writing, therefore, there are 19 states with some provision of this particular type.

A proposed law of this type was placed on the ballot in the state of Washington last Fall (1956) and was defeated. At the same time, Nevada voters were given an opportunity to repeal their law and declined to do so. CCH LAB. L. REP., Weekly Summary No. 443, 11/15/56.

For the one state (Indiana) which enacted such a law this year, twelve others in legislative session took no action on bills which were introduced. In Idaho, it is reported that the issue was closely contested, but in states like California, Connecticut, Illinois, and Ohio, no real threat developed. Fortune, Sept., 1957, at p. 241.

<sup>19</sup> It has been suggested that the southern states originally abolished compulsory unionism as an inducement to northern industry to relocate, thus making it basically an economic move. Cheit, *Union Security and the Right to Work*, 6 LAB. L. J. 357 (1955). The unions, of course, consider it an effort to cripple the labor movement.

<sup>20</sup> Fortune, Sept., 1957, at p. 236. According to this report, very little union busting has occurred, although in some states the laws have made it somewhat more difficult to organize workers inclined to be on the fence. In one state, where the law succeeded in attracting new industry, union membership actually increased, apparently following the industry in; while in the others, union membership appears to be about as high as before. It is also reported that enforcement has not been effective and union security provisions still exist in many of these states.

to have been obtained without the benefit of special legislation,<sup>21</sup> but legislative action was already underway and is now in effect.

The statutory method, as a rule, first declares that it is contrary to state policy to deny or abridge the right of a person to work on account of membership or non-membership in a labor union (this is the extent of most of the constitutional provisions); prohibits any requirement making membership or non-membership in a labor union, or the payment of dues, fees, or any other charges thereto, a condition of employment; states that any agreement or combination accomplishing such a result is against public policy and amounts to an illegal combination or conspiracy in restraint of trade; and provides for the recovery of damages for any violation thereof.<sup>22</sup> Virginia has one of the most detailed acts, and Georgia one of the toughest.<sup>23</sup>

#### CONSTITUTIONALITY OF "RIGHT TO WORK" LAWS

The constitutionality of these provisions has been established beyond any question. The United States Supreme Court has specifically upheld, as against constitutional attack, the provisions of the North Carolina statute<sup>24</sup> and the Nebraska constitutional amendment.<sup>25</sup> In a companion case, the Arizona right to work amendment, providing that no person shall be denied the opportunity to obtain or retain employment because of non-membership in a labor organization, and nothing more, was also upheld as a constitutional exercise of state power to protect the public welfare.<sup>26</sup>

<sup>21</sup> In *Snaveley v. International Harvester Co.*, (Ind. Cir. 1947), 39 L.R.R.M. 2526, the court held that Indiana policy forbids contracts requiring maintenance of union membership as a condition of employment. Ironically, the decision appears to rest rather heavily upon a single clause in the introductory language of the state Anti-Injunction Act, which states that "the individual unorganized-worker is commonly helpless to exercise actual liberty of contract, and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, *though he should be free to decline to associate with his fellows*, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment. . . ." (Emphasis supplied). Ind. Acts 1933, c 12, §§ 40-502.

<sup>22</sup> See, for instance, the Alabama and North Carolina statutes, note 18 *supra*, which appear to be typical.

<sup>23</sup> The penalty prescribed in Section 9922 of the Georgia Act for violation of these provisions, places it within the discretion of the Judge to impose any one or more of the following: a \$1,000 fine, imprisonment up to six months in the chain gang, or up to 12 months on any other public works; except that a female, in lieu of the chain gang, may be sentenced for up to 12 months to labor and confinement.

<sup>24</sup> *Whitaker v. North Carolina*, 335 U.S. 525 (1949).

<sup>25</sup> *Lincoln Federal Labor Union v. Northwestern Iron & Metal Co.*, 335 U.S. 525 (1949).

<sup>26</sup> *AFL v. American Sash & Door Co.*, 335 U.S. 538 (1949). A separate opinion

In the first two cases, the Supreme Court ruled that nothing in the language of these provisions indicated a purpose to prohibit the exercise of either free speech or the right of assembly and petition. With respect to the issue of equal protection of the laws, the Court found that the provisions in question commanded equal employment opportunities for both groups of workers, i.e., union members as well as non-members. Furthermore, the Court said, the due process clause of the Fourteenth Amendment did not forbid legislative safeguards for the opportunity of non-union workers to get and retain jobs. In the words of the Court: "Just as we have held that the due process clause erects no obstacle to block legislative protection of union members, we now hold that legislative protection can be afforded non-union workers."

With respect to the Arizona constitutional amendment, the Court repeated the rule of the *Jones & Laughlin* case<sup>27</sup> that "legislative authority exerted within its proper field, need not embrace all the evils within its reach." Otherwise, the issues were disposed of in the same manner as in the other two cases. The state and lower Federal courts have uniformly held similar views.<sup>28</sup>

The Louisiana law, before its repeal, attempted to extend the prohibitions even further by banning picketing, work stoppages and other conduct "a purpose or effect of which" was to cause someone to violate the Act. This was held to be an unconstitutional infringement of free speech to the extent that it authorized interference with picketing which might have such an "effect" without an unlawful purpose. The saving clause at the end of the statute, however, prevented this defect from invalidating the remainder of the provisions.<sup>29</sup>

It may also be of interest to note that statutes barring union security provisions will not be applied to collective bargaining agreements made before such prohibitions became effective.<sup>30</sup>

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was necessary because of the omission of any protection for union members and the additional issue thereby raised.

<sup>27</sup> *NLRB v. Jones & Laughlin Corp.*, 301 U.S. 1 (1937).

<sup>28</sup> *Finney v. Hawkins*, 189 Va. 878, 54 S.E. 2d 872 (1949); *Construction and General Labor Union v. Stephenson*, 148 Tex. 434, 225 S.W. 2d (1950); *Local 519. Plumbing and Pipefitting Industry v. Robertson*, 44 So. 2d 899 (Fla. 1950); *Pieghts v. Meat Cutters' Union*, 228 La. 131, 81 So. 2d 835 (1955); *AFL v. Watson*, 60 F. Supp. 1010 (S.D. Fla. 1945); *Federal Firefighters v. Roane-Anderson Co.*, 185 Tenn. 320, 206 S.W. 2d 369 (1947); *Maccari v. International Teamsters Union*, 187 Tenn. 345, 215 S.W. 2d 779 (1948).

<sup>29</sup> *Hanson v. International Union of Operating Engineers*, 79 So. 2d 199 (La. Cir. Ct. App. 1955).

<sup>30</sup> *Head v. Barber's Union*, 35 L.R.R.M. 2533 (Ala. 1955); see, also, the recent ruling of the Indiana Commissioner of Labor, *CCH LAB. L. REP.*, (Ind.) Par. 41,025 (1957).



## QUESTION OF PROPER PARTY PLAINTIFF

Several jurisdictions have considered the matter of who may enlist the aid of the courts in the enforcement of these provisions. There can be no doubt about the right of the individual workman to bring civil suit under those statutes which specifically provide for damages. The state itself is charged with enforcement, of course, where criminal penalties are prescribed. Even in the absence of express language making a violation of the statute a criminal offense, it has been held that action in conflict therewith may nevertheless be punished as a misdemeanor.<sup>31</sup>

The right of a union to bring action is subject to considerable uncertainty. A union of municipal employees tried it in *Water Works Local No. 654 v. City of Miami*,<sup>32</sup> instituting an action for a declaratory judgment to determine whether the city might discriminate against employees because of union membership. The Supreme Court of Florida held that the right under the constitutional amendment was personal, and the infringement thereof could not be raised by the union. A similar result was reached where the union sought to enjoin a private employer from discharging employees because of union membership.<sup>33</sup> On the other hand in *Leiter Mfg. Co. v. Ladies Garment Workers*,<sup>34</sup> it was held that a union could obtain a mandatory injunction requiring an employer to reinstate workers discharged in violation of the Texas statute.

The state was held to have sufficient interest to obtain an injunction where one of its projects was allegedly threatened by negotiations for a union security provision between its contractors and the union, in violation of the Virginia law.<sup>35</sup>

Individual workmen, for whom the laws were ostensibly designed, have occasionally pursued the remedies made available thereunder. Thus where a publisher, in order to obtain a contract to print a labor union journal, agreed to a union shop provision and discharged one worker for his failure to join, the worker recovered damages from the employer for the period of his unemployment, after he joined the union and was re-

<sup>31</sup> *State v. Bishop*, 228 N.C. 371, 45 S.E. 2d 858 (1947), wherein the court reasoned that an offender may be punished in such a case since the statute is concerned with public policy and is aimed at practices considered detrimental to the public welfare; *State v. Whitaker*, 228 N.C. 352, 45 S.E. 2d 860 (1947). See, also, *Local 519 v. Robertson*, 40 S. 2d 899 (Fla. 1950); *Local 324 v. Upshur-Rural Electric Co-op Corp.*, 261 S.W. 2d 484 (Tex. Civ. App. 1953).

<sup>32</sup> 157 Fla. 445, 26 S. 2d 194 (1946).

<sup>33</sup> *Miami Laundry Co. v. Local 935*, 41 So. 2d 305 (Fla. 1949).

<sup>34</sup> 269 S.W. 2d 409 (Tex. Civ. App. 1954).

<sup>35</sup> *Commonwealth v. Plumbing Journeyman*, 32 L.R.R.M. 2610 (Richmond Ct. 1953).

employed.<sup>36</sup> In another case, the workers obtained an order of reinstatement after being discharged as a result of the operation of a maintenance of membership clause in a collective bargaining agreement.<sup>37</sup>

Procedural and factual difficulties are likely to be encountered, however. For instance, according to the Georgia Supreme Court a mandatory injunction under general equity powers was not the proper remedy where the employees were discharged for being union members.<sup>38</sup> The Texas Court of Civil Appeals held that an injunction should not issue where the worker was discharged for activities not necessarily inherent in union membership, and thus failed to sustain his burden of showing that such membership was the procuring cause of the employer's action.<sup>39</sup>

Rarely has the individual worker's action been against the union. In *Dukes v. Local 437*,<sup>40</sup> however, the plaintiff alleged that the union maliciously procured his discharge by (1) falsely telling the employer that he had been expelled from the union, and (2) threatening to strike. The court held that the Tennessee statute was directed against the employer and had no application to the conduct of a union in procuring the discharge.<sup>41</sup> Some statutes contain an express reference to an association acting in concert with the employer and in two of these states damages have been recovered from the union.<sup>42</sup>

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<sup>36</sup> *Finney v. Hawkins*, 189 Va. 878, 54 S.E. 2d 872 (1949). Compare, however, *Fackler v. Brotherhood of Painters*, 26 Labor Cases 86, 867 (Tenn. Ct. App. 1954), wherein a contract between a general contractor and a sub-contractor providing that all painting was to be done by union men was held not to be prohibited by the terms of the Tennessee law even though the use of union men would of necessity exclude the use of non-union men.

<sup>37</sup> *Grimes v. Merrill-Stevens Dry Dock & Repair Co.*, 20 L.R.R.M. 2464 (Cir. Ct., Fla. 1947); aff. 20 L.R.R.M. 2502.

<sup>38</sup> *Sandt v. Mason*, 208 Ga. 541, 67 S.E. 2d 767 (1941).

<sup>39</sup> *Local 324 v. Upshur-Rural Electric Co-Operative Corp.*, 261 S.W. 2d 484 (Tex. Civ. App. 1953). The employee had been a supervisor and was soliciting new members for the union on the company's time and premises. The court felt that such activities went beyond the purview of the reference to discharge for union membership in the statute. Compare, however, *Lunsford v. City of Bryan*, 297 S.W. 2d 115 (Tex. 1957), where in plaintiff, a city fireman, headed a group which sought and obtained a local charter from the firemen's national union. He was fired in the belief that he was already a member of the new local, although the affiliation was not completed until later the same day. However, plaintiff had done everything possible to acquire membership, including the payment of dues, and the court held that he was entitled to the protection of the Texas statute. Apparently it was not so clear that the discharge in this instance was due primarily to his organizational activities apart from his newly acquired membership. In any event, reinstatement was ordered.

<sup>40</sup> 191 Tenn. 495, 235 S.W. 2d 7 (1950).

<sup>41</sup> The court said that a cause of action existed, but not under the statute.

<sup>42</sup> *Finney v. Hawkins*, 189 Va. 878, 54 S.E. 2d 872 (1949), in which the union was held jointly responsible for the damages suffered under the terms of the Virginia

## APPLICATION TO UNION PICKETING

By far the greatest part of the litigation under these provisions has involved union picketing. Here, of course, it is the employer who is enlisting support from the terms of the statute, and quite obviously this accounts for the enthusiastic support of proposals of this type by many employer groups. It is undoubtedly in this area that the usefulness of these provisions ultimately will be determined.

In *Giboney v. Empire Storage & Ice Co.*,<sup>43</sup> the Supreme Court decided that peaceful picketing for an unlawful purpose was not protected by the constitutional guaranty of free speech. The picketing in that case, undertaken to discourage the use of non-union peddlers, was enjoined as a violation of the Missouri anti-trust law. A similar result was reached even in the absence of criminal sanctions in the pertinent state law, the Court holding that the violation of public policy expressed in a state statute was sufficient to support the issuance of a restraining order.<sup>44</sup> The "right to work" laws came well within this rule, of course, and in *Plumbers Local No. 10 v. Graham Bros.*,<sup>45</sup> the Supreme Court ruled that peaceful picketing, the purpose of which was in conflict with the Virginia statute, might properly be enjoined. Following the rule thus established, the state courts have uniformly held that peaceful picketing which seeks to attain an objective prohibited by the "right to work" laws may be enjoined.<sup>46</sup> Once this is found to be the case, the issuance of the injunction will not be barred by evidence that there was, in addition, a lawful purpose, such as improving wages and working conditions,<sup>47</sup> publicizing sub-standard wages in an effort to persuade the employer to raise his wage standard (or other facts of dispute),<sup>48</sup> organizing non-union employees,<sup>49</sup> or seeking recognition as the bargaining agent.<sup>50</sup>

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statute; *Russell v. United Auto Workers*, 258 Ala. 615, 64 So. 2d 384 (1956), where the worker recovered damages of \$10,000.00.

<sup>43</sup> 336 U.S. 490 (1949).

<sup>44</sup> *Building Service Employees Local 262 v. Gazzam*, 339 U.S. 532 (1950).

<sup>45</sup> 345 U.S. 192 (1953).

<sup>46</sup> *Self v. Taylor*, 217 Ark. 953, 235 S.W. 2d 45 (1950); *Local 519 v. Robertson*, 44 So. 2d 899 (Fla. 1950); *Local 430 v. Ormerod*, 61 So. 2d 753 (Fla., 1952); *Texas State Federation of Labor v. Brown & Root*, 246 S.W. 2d 1938 (Tex. Civ. App. 1952); *Local 1018 v. Roundtree Corp.*, 194 Va. 148, 72 S.E. 2d (1952); *Shamrock Dairy v. Teamsters Local 310*, 36 L.R.R.M. 2748 (Ariz. 1955); *Minor v. Building Trades Council*, 75 N.W. 2d 139 (N.D. 1956).

<sup>47</sup> *Local 688 v. Stephenson*, 148 Tex. 434, 225 S.W. 2d 958 (1950); *Burgess v. Daniel Plumbing & Gas Co.*, 285 S.W. 2d 517 (Ark. 1956).

<sup>48</sup> *Hanson v. Operating Engineers Local 406*, 79 So. 2d 199 (La. Cir. Ct. App. 1955); *Local 802 v. Asimos*, 216 Ark. 694, 227 S.W. 2d 154 (1950); *Self v. Wisener*, 37 L.R.R.M. 2741 (Ark. 1946).

<sup>49</sup> *Thurman v. Shearin*, 37 L.R.R.M. 2579 (Tenn. 1956).

<sup>50</sup> *Gallispie Const. Co. v. International Hod Carriers*, 32 L.R.R.M. 2383 (Fla. Cir.

The rule of unlawful purpose under the state "right to work" laws may be applied in any case in which union demands are construed as requiring a closed or union shop. Efforts to enforce any such demand, by picketing or otherwise, have been enjoined on numerous occasions.<sup>51</sup> Preferential hiring arrangements are equally taboo thereunder.<sup>52</sup> But this interpretation does not extend to the point of interfering with the filling of a work order by the state employment service, where the employer has requested the referral of union members only.<sup>53</sup>

Ct. 1953), *cert. denied* 71 So. 2d 921 (1955); *Sax Enterprises, Inc. v. Local 255*, 80 So. 2d 602 (Fla. 1955).

<sup>51</sup> *Local 234 v. Henley & Beckwith*, 66 So. 2d 818 (Fla. 1953), involving a provision that union members would work only for employers who were parties to the contract and that the employers would employ only journeymen who were union members in good standing; *Machinists Local 924 v. Goff McNair Motor Co.*, 224 Ark. 30, 264 S.W. 2d 48 (1954), involving a provision that "the refusal of any or all employees who are members of the union to work with an employee who is not a member of the union will not be considered a violation of this agreement"; *Self v. Taylor*, 217 Ark. 953, 235 S.W. 2d 45 (1950), in which the provision sought would allow the union to cancel the agreement at any time on 60 days' notice, the court concluding, upon the evidence, that such a clause would be invoked if any non-union men were employed; *Local 519 v. Robertson*, 44 So. 2d 899 (Fla. 1950); *Local 688 v. Stephenson*, 148 Tex. 434, 225 S.W. 2d 958 (1950); *Local 802 v. Asimos*, 216 Ark. 694, 227 S.W. 2d 154 (1950); *Texas State Federation of Labor v. Brown & Root*, 246 S.W. 2d 1938 (Tex. Civ. App. 1952); *Minor v. Building Trades Council*, 75 N.W. 2d 139 (N. Dak. 1956); *Burgess v. Daniel Plumbing & Gas Co., Inc.*, 285 S.W. 2d 517 (Ark. 1956); *Powers v. Courson*, 96 S.E. 2d 577, 39 L.R.R.M. 2410 (Ga. 1957); *Olen Department Stores v. Retail Clerks*, 39 L.R.R.M. 2112 (Miss. Ch. 1956); *Local 38 v. Zachry Co.*, 276 S.W. 2d. 876 (Texas Civ. App. 1955); *Gulf Shipline Storage Co. v. Moore*, 71 So. 2d 236 (La. App. 1955); *Treasure, Inc. v. Local 133*, 72 So. 2d 670 (Fla. 1954).

<sup>52</sup> *Building Trades Council v. Bonita*, 280 P. 2d 295 (Nev. 1955), involving a provision that the union was to be given 48 hours to supply craftsmen required by the employer before the latter could recruit non-union workmen — the court reasoned that so long as the union could meet this condition, the opportunity of non-union workers would be limited contrary to the intent of the statute; *Local 175 v. Walker*, 236 S.W. 2d 683 (Tex. Civ. App. 1951), in which the result was not affected by a saving clause which specified that any provision in the contract which was in violation of a valid state law was to be ineffective; although the picketing was undertaken to bring about the execution of the contract as a whole; *Commonwealth of Virginia v. Local 10*, 32 L.R.R.M. 2610 (Richmond Ct. 1953), in which the disputed provision would have required the employer to "employ only journeymen and apprentices who are in good standing in the local union unless the local union fails to supply an adequate number on request." Compare, however, *Ketcher v. Sheet Metal Workers*, 115 F. Supp. 802 (E.D. Ark. 1953), in which the Federal District Court ruled that a provision requiring the union to furnish, on request, duly qualified journeymen and apprentices in sufficient numbers as may be necessary to properly execute work contracted for, did not create a closed or union shop; and further held that a saving clause like the one in the *Walker* case, *supra*, was effective to avoid a conflict with state law. This was an action for alleged conspiracy to induce the breach of a collective bargaining agreement, and against a defense claim that the contract was illegal as providing for a closed shop, the saving clause was considered sufficient basis to dispose of a motion to dismiss.

<sup>53</sup> *Ops. Att'y. Gen. (Nev.)*, 4 CCH LAB. L. REP., ¶ 41,025 (Nev., 1952).

The extent to which these "right to work" provisions may be utilized is illustrated in a case involving two union meat cutters. Being required to work twelve hours for six days a week and five hours on Sunday, the two men appealed to their union for assistance in obtaining better hours and working conditions. The union sought to obtain a contract making it the sole bargaining agent for the meat department, in which the two meat cutters were the only employees. The employer refused to negotiate and when the meat cutters struck and picketed the store, the employer hired non-union butchers. The picketing was thereafter enjoined at the employer's request on the basis that the union demand would amount to an abridgement of the rights of the non-union butchers within the language of the Louisiana law.<sup>54</sup>

In a recent Tennessee decision, peaceful picketing of a non-union barber shop to force higher prices conforming with union standards was enjoined partly on the basis of the "right to work" statute.<sup>55</sup>

Despite the scope of these decisions, exclusively lawful objectives may still be established if sufficient care is exercised, and it may be said, albeit cautiously, that the doctrine of "free speech" as applied to picketing<sup>56</sup> is not entirely dead even in the states with "right to work" laws. Where the employer has job openings, picketing in order to persuade him to hire union men is not unlawful.<sup>57</sup> Nor is picketing in protest of a discharge of employees because of union membership.<sup>58</sup> Picketing for the sole purpose of settling a dispute between the company and some of its drivers regarding a new system of delivering the company's product, will not be enjoined.<sup>59</sup> It has also been held that the bare fact that a picket

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<sup>54</sup> *Piegts v. Meat Cutters Union*, 228 La. 131, 81 So. 2d 835, 36 L.R.R.M. 2261 (1955), decided under the Louisiana Law prior to its repeal. The union encountered procedural difficulties when it withdrew its demand to be recognized as sole bargaining agent for the meat department and substituted a request to be recognized in negotiations for its members only, thereafter filing an application for rehearing. The maneuver was not successful.

<sup>55</sup> *Flatt v. Barber's Union*, 32 CCH LAB. CAS., § 70,698 (Tenn., 1957), the court reasoned that there had been an interference with the public's free choice of patronage. Other grounds for the decision: the union's action tended to thwart competition, and sought to destroy the owner's right to conduct a business.

<sup>56</sup> Initially announced in *Thornhill v. Alabama*, 310 U.S. 88 (1940).

<sup>57</sup> *Local 1018 v. Roundtree Corp.*, 194 Va. 148, 72 S.E. 2d 402 (1952). The decision is to be distinguished from *Hanson v. Local 406*, 79 So. 2d 199 (La. Cir. Ct. App., 1955), wherein no vacancies existed, and *Local 10 v. Graham Bros.*, 345 U.S. 192 (1953), wherein the employer was in effect requested to agree to a union shop.

<sup>58</sup> *Hotel and Restaurant Employees v. Cothran & Felton*, 59 So. 2d 366 (Fla., 1952). When the union demanded a closed shop contract, the employer responded by firing all union members, but the court decided that the subsequent picketing was in protest of the discharge and not the unlawful demand for a closed shop.

<sup>59</sup> *Shamrock Dairy v. Local 310*, 36 L.R.R.M. 2748 (Ariz., 1955).

line exists will not support an inference that the employer is about to be coerced into forcing all his non-union employees to join up.<sup>60</sup>

One writer<sup>61</sup> has proposed that a "bargaining fee" be imposed upon non-union workers in place of the compulsory union membership required under the traditional union shop plan. This might work very well in a state like North Dakota, where the "right to work" provision does not specifically prohibit the payment of fees or charges of any kind to a labor union;<sup>62</sup> but it would be unlawful in most of the others.<sup>63</sup>

#### LOCAL JURISDICTION

If a state declines to take advantage of Section 14 (b) of the Labor Management Relations Act, can a municipality step forward and enact a valid "right to work" ordinance of its own? In one recent decision, the court said "no."<sup>64</sup> It was held that the federal provision did not give state subdivisions the power to act in this area, and that the policy of the state, allowing both closed and union shop contracts, had preempted the field to the exclusion of any inconsistent municipal action. But contrary opinion has also been expressed.<sup>65</sup>

#### FEDERAL JURISDICTION

As might be expected in the field of labor relations, with the federal Labor Management Relations Act applying to most aspects of the subject, jurisdictional problems are bound to arise with respect to any employer engaged in, or whose business affects, interstate commerce. The federal law is normally paramount in cases of conflict<sup>66</sup> but of course the problem is somewhat different where the law in question specifically carves out an area within which the states are permitted to legislate. Nevertheless, where a direct conflict does arise, it has been held that the federal law remains supreme.

Thus where a labor union engaged in picketing for the purpose of coercing an employer to require its employees to become or remain union

<sup>60</sup> *Self v. Wisener*, 37 L.R.R.M. 2741 (Ark., 1956).

<sup>61</sup> Spielmans, *Bargaining Fee Versus Union Shop*, 10 IND. & LAB. REL. REV. 609 (1957).

<sup>62</sup> Ops. Att'y. Gen., 37 L.R.R.M. 363 (1956); accord, Ops. Att'y. Gen. (Nev.), 30 L.R.R.M. 127 (1952).

<sup>63</sup> *Arizona Flame Restaurant, Inc. v. Bartenders' Local 631*, 34 L.R.R.M. 2707 (Ariz., 1954); Ops. Att'y. Gen. (N.C.), 4 CCH LAB. L. REP., § 41,025 (1952).

<sup>64</sup> *Stephenson v. Palm Springs*, 39 L.R.R.M. 2393 (Calif. Super. Ct., 1957).

<sup>65</sup> Berke and Brunn, *Local Right-to-Work Ordinances: A New Problem in Labor and Local Law*, 9 STAN. L. REV. 674 (1957), in which the authors conclude that there is no federal or state impediment to local ordinances on this subject.

<sup>66</sup> *Garner v. Teamsters, Chauffeurs & Helpers Union*, 346 U.S. 485 (1953).

members, the union's action being in conflict with both the provisions of the state "right to work" law and the terms of Section 8 (b) (2) of the Labor Management Relations Act, the court ruled that the matter was within the exclusive jurisdiction of the N. L. R. B. and that the union action could not be enjoined under the terms of the state law.<sup>67</sup>

Likewise, where a group of employees sued for reinstatement after allegedly being discharged for becoming union members, the state court concluded that the employer's action amounted to an unfair labor practice under Section 8 (a) (3) of the Labor Management Relations Act, as interpreted by the N. L. R. B., and an injunction, therefore, could not be issued under the "right to work" provision.<sup>68</sup>

This view has been affirmed in a recent decision by the United States Supreme Court in *Electrical Workers Local 429 v. Farnsworth & Chambers Company*,<sup>69</sup> which involved picketing of a construction site to prevent a contractor from hiring non-union labor. The picketing had been enjoined as a violation of the state "right to work" law but the Supreme Court held that the N. L. R. B. had sole authority, notwithstanding the state law, since interstate commerce was involved.

However, a suit for damages may be a different matter. The right to damages is specifically granted in most of the state statutes, whereas the federal law makes no provision for damages as such, although back wages may be ordered in a proper case. Substantial damages have been awarded in at least one state case on the ground that a valid state law is superseded by a federal statute only where the repugnance or conflict is so direct and positive that the two acts cannot be reconciled or consistently stand together.<sup>70</sup> In such a case, however, the judgment of the state court will not be binding on the N. L. R. B.<sup>71</sup>

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<sup>67</sup> *Gulf Shiplside Storage Company v. Moore*, 71 So. 2d, 236 (La. App. 1955). The union had been certified as the bargaining representative under the federal act and the strike was called when the employer refused to accede to the union's demand to compel all employees to join. In addition to being an unfair practice under the federal law, the strike was in violation of the collective bargaining agreement. The employer's contention that the state court had jurisdiction because the NLRB Regional Director refused to issue a complaint, was rejected on the basis that the proper procedure was an appeal to the NLRB itself.

<sup>68</sup> *Leiter v. Ladies Garment Workers*, 269 S.W. 2d 409 (Tex. Civ. App., 1954).

<sup>69</sup> 32 CCH LAB. CAS., § 70, 724 (1957). See, also *NLRB v. White Construction Company*, 32 L.R.R.M. 2198 (Ct. of App., 5th Cir., 1953), holding that a demand by a union for a union shop provision in a collective bargaining contract, although contrary to the state "right to work" law, did not relieve the employer of his duty to bargain with the union since the demand related merely to the kind of contract to be negotiated.

<sup>70</sup> *Russell v. United Automobile Workers*, 258 Ala. 615, 64 So. 2d, 384 (1956). The employee recovered damages in the sum of \$10,000.

<sup>71</sup> *Ibid.* The Court held that the essential elements of *res adjudicata* were lacking be-

At least one author is convinced that the situation arising out of laws banning union security provisions in some states and not in others will eventually lead to competitive pressures upon employers in the latter states, which may cause management groups to join with labor groups in seeking greater unanimity through federal legislation.<sup>72</sup>

Another area of conflict between state "right to work" provisions and federal law was created by the amendment to the Railway Labor Act in 1951 specifically authorizing union shop agreements.<sup>73</sup> A flurry of litigation resulted, and one of the cases eventually reached the United States Supreme Court.<sup>74</sup>

Here again the issue of conflicting jurisdiction was resolved in favor of the federal enactment. The court ruled that the provision was permissive only, since Congress was not compelling carriers and their employees to enter into union shop agreements, and that no violation of the First or Fifth Amendments to the Federal Constitution had been shown.<sup>75</sup> In the words of the Court: "The choice by Congress of the union shop as a stabilizing force seems to us to be an allowable one." The only conditions to union membership authorized by the Amendment, the Court pointed out, were the payment of periodic dues, initiation fees and assessments.<sup>76</sup> The requirement for financial support of the collective

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cause the suit in the state court involved the enforcement of a private right, whereas an NLRB order involves the enforcement of a public right or duty.

<sup>72</sup> Morgan, *Union Security — Federal or State Sphere*, 4 LAB. L.J. 815, 821 (1953).

<sup>73</sup> 45 U.S.C.A. § 152, § 11. The exact language of this provision, often referred to as the "union shop" amendment, is as follows:

"Notwithstanding any other provisions of this chapter, or any other statute or law of the United States, or Territory thereof, or of any State, any carrier or carriers as defined in this chapter and a labor organization or labor organizations duly designated and authorized to represent employees in accordance with the requirements of this chapter shall be permitted —

(a) to make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever is the later, all employees shall become members of the labor organization representing their craft or class; *Provided*, That no such agreement shall require such condition of employment with respect to employees to whom membership is not available upon the same terms and conditions as are generally applicable to any other member or with respect to employees to whom membership was denied or terminated for any reason other than the failure of the employee to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership."

<sup>74</sup> 351 U.S. 225 (1956).

<sup>75</sup> *Id.* at 238.

<sup>76</sup> *Id.* at 235. See, also, *Sandsberry v. International Association of Machinists*, 36 L.R.R.M. 2753 (Tex. Sup. Ct. 1955). This limitation has led Dean McClain to



bargaining agency by all who receive the benefits of its work, the Court concluded, is within the power of Congress under the commerce clause. This result apparently caused consternation to some,<sup>77</sup> but had been foreshadowed by an overwhelming majority of the courts which had considered the issue.<sup>78</sup>

#### ALTERNATE APPROACHES

Not all states which took advantage of Section 14 (b) of the LM.R.A. chose to outlaw union security measures entirely. The Labor Relations Law of Massachusetts, in order to protect the rights of individuals employed under union security agreements, provides for an appeal to the Labor Relations Commission in any case of unfair denial of admission to, or suspension or expulsion from, the union. Other state laws have approached the problem more obliquely, by making it an unfair labor practice for an employer to enter into a union security agreement which fails to meet prescribed conditions.<sup>79</sup> On behalf of this approach, it may be said that it is more restrained and more in keeping with earlier applications of the right to work.

#### CONCLUSION

From the standpoint of the individual, the "right to work" provisions, as a practical matter, do not seem to offer too much. Few cases have

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question whether the railway unions got a bargain in the Union Shop Amendment, in view of the attendant restrictions on the use of union funds. McClain, *New Jurisdictional Concepts: Right to Work — Union Membership*, 8 LAB. L.J. 159 (1957).

<sup>77</sup> See McClain, *The Union Shop Amendment: Compulsory "Freedom" to Join a Union*, 42 A.B.A.J. 723 (1956). Compare, Gilbert, *The Right to Work Revisited: A Reply to Dean Joseph A. McClain*, 43 A.B.A.J. 231 (1957).

<sup>78</sup> The constitutionality, as well as the supremacy of the federal amendment, was upheld in the following decisions: *Matter of Florida East Coast Railway*, 32 L.R.R.M., 2533 (D.C., S.D., Fla., 1953); *Moore v. C&O R. Co.*, 34 L.R.R.M., 2666 (Richmond Ct., Va., 1954); *Hudson v. Atlantic Coast Line Railway Company*, 242 N. Car., 650, 89 S.E. 2d 441 (1955); *International Association of Machinists v. Sandsberry*, 277 S.W. 2d 776 (Tex. Civ. App., 1954). The Texas Supreme Court postponed a decision (36 L.R.R.M. 2753, (1955)) until after the U.S. Supreme Court's ruling in the *Hanson* case and then affirmed. *Sandsberry v. International Association of Machinists*, 38 L.R.R.M. 2478 (Tex. Sup. Ct., 1956). The only decision expressing a contrary view was the one appealed to the U.S. Supreme Court. *Hanson v. Union Pacific R.R.*, 160 Neb., 669, 71 N.W. 2d 526 (1955).

<sup>79</sup> See, MATHEWS, LABOR RELATIONS AND THE LAW, 484-486 (1953). Pennsylvania, Colorado, Wisconsin, and Hawaii have adopted the latter approach, the conditions being similar to those contained in Section 8 (3) of the original Wagner Act. Colorado, Wisconsin, Kansas, and Hawaii require certain voting procedures as a condition precedent to the execution of a valid union security agreement (as did the Taft-Hartley Act with respect to union shop agreements prior to the 1951 amendment).

been filed by individual workmen. At least in times when jobs are relatively plentiful, the damages suffered by workmen individually are not likely to be enough, in the average case, to justify the rigors and expense incident to litigation in the civil courts.

Under both the Labor Management Relations Act and the Railway Labor Act, even union shop contracts cannot be used to impose general control over workers. The compulsion extends only to the payment of initiation fees and periodic dues.<sup>80</sup> This reduces the effect of these provisions pretty much to the elimination of "free riders;" and the avoidance of such exactions, much as they may have a galling effect on some similar to that engendered by taxes, is unlikely to be worth the effort to the average workman.

The elimination of discrimination and other abuses within the unions, would seem to require a more direct approach than that offered by these provisions banning all forms of union security. The congressional hearings which have been in progress in recent months may possibly produce some useful ideas for legislation more appropriate to a solution of this sort of thing. Something with administrative machinery, quickly and cheaply available, would appear to fit the need better than resort to the courts, with their already over-burdened dockets. There are also signs that the unions themselves have become acutely aware of the dangers inherent in such abuses and are taking steps under their own procedures to meet the challenge.

From the management standpoint, these provisions provide another offensive weapon against the picket line. The decisions make it clear that picketing which in any way may be construed as an effort to enforce some form of "union security" is subject to injunction in those states having the ban. In some of the other states, the injunctive process appears to be almost as readily available without the aid of these provisions, but there can be little doubt that the specific expression of legislative policy helps.

There are limitations to this, however. As the unions experience the added threat from this source, they are less likely to allow any semblance of compulsory unionism to creep into negotiations. In the *Pieghts* case<sup>81</sup> the union tried to amend its demand and was prevented from doing so only by procedural limitations. Furthermore, as some of the more recent decisions indicate, in the larger industries and places of business, the potential conflict with the federal law presents an additional hazard. Final-

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<sup>80</sup> *Radio Officers Union v. N.L.R.B.*, 347 U.S. 17, 41 (1954); *Union Starch and Refining Co. v. N.L.R.B.*, 186 F. 2d 1008, 1012 (7th Cir., 1951); and cases cited *supra*, note 78.

<sup>81</sup> *Pieghts v. Meat Cutters Union*, 228 La. 131, 81 So. 2d 835 (1955).

ly, as the union movement gains a firmer foothold, which it is likely to do in all of these states as industry moves in, the advantages of these provisions are likely to be less apparent to the average employer.

If neither the workmen nor the employers choose to make frequent use of these "right to work" provisions, their usefulness will be virtually ended. They are not self-executing, and according to at least one current report they are being observed, even now, more in the breach than in the obedience.<sup>82</sup> In this writer's opinion, the future of this type of legislation is not likely to be portentous.

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<sup>82</sup> Fortune, Sept. 1957.