THE RESULT OF THE TAFT-HARTLEY CLOSED SHOP BAN

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THE RESULT OF THE TAFT-HARTLEY CLOSED SHOP BAN

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CHAPTER I

THE DEVELOPMENT OF THE CLOSED SHOP IN THE AMERICAN LABOR MOVEMENT

Along with the issues of higher wages, shorter hours, and better working conditions, organized labor in the United States has considered the closed shop to be one of its basic goals. Throughout the stormy formative period of the American labor movement, the closed shop was regarded by many unions as the only safe form of union security. The generally hostile attitude of business management, the courts, and some political administrations influenced some parts of the labor movement to consider the closed shop as a basic prerequisite for effective collective bargaining, the enforcement of agreements, and the perpetuation of the union movement. From the passage of the Labor Management Relations Act of 1947 (also known as the Taft-Hartley Law) to the present time, the issue of the closed shop has constituted one of the most controversial subjects in the field of labor relations, and has been in the forefront of federal and state labor legislation. Utilized as a campaign issue in the presidential election of 1948 by both major political parties, and again in 1952, the closed shop has been the subject of continuous public debate and discussion. One major reason for the importance of the closed shop...
shop is that it has represented a maximum form of "union security," or the ability of a union to regulate and govern its own affairs and to fulfill its basic functions without interference and/or intimidation from outside forces.

Contrary to many assumptions to that effect, the problem of union security has never been limited to mere recognition of the union by the employer. Most labor organizations have attempted to persuade employers to hire exclusively or mainly from among their members, and the ideal arrangement for this type of agreement has been considered to be the closed shop. In order of acceptability, most unions rank union security agreements in the following order:

1. The closed shop (maximum security)
2. The union shop
3. The maintenance-of-membership agreement
4. The preferential shop
5. The exclusive bargaining agent
6. Bargaining for members only
7. The open shop (minimum security).

These union security agreements are defined as follows:

The "closed shop" is an agreement under which the employer must hire union members to fill vacancies in his

working force, or when additional workers are needed. Under this agreement the union may or may not do the hiring, but in all cases covered by the closed shop only union members may be hired.

In the "union shop," the employer may hire any person he wants, regardless of the status of the individual in regard to union affiliation, but after a probationary period the new employee must join the union or be separated.

Under the "maintenance-of-membership" agreement, these workers who were members of the union at the time when a contract was signed are required to continue their membership in good standing for the duration of the contract. This was a compromise measure adopted by the National War Labor Board during World War II.

In the "preferential shop" union members are given preference in initial employment and in returning to their jobs after layoffs.

Under an "exclusive bargaining agent" contract, the employer may hire any worker he wants, but the union is recognized as the sole bargaining agent of all of the workers.

Under a "bargaining-for-members-only agreement," the union is recognized as the representative of those employees who are members.
In the true open shop, there is no official recognition of the union as a bargaining agent, and no official representation of any workers by any labor organization. Also, there is no discrimination against a union member because of his membership.

The closed shop is not new in the field of union security. In one form or another, it may be traced back as far as the guilds of the Middle Ages, when members discriminated against non-members. In more recent times, there has been evidence

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2 There is a distinction between the real open shop (defined in the text) and the National Association of Manufacturers' "Open shop," which in over fifty years has indicated that it represents the no-union and no-union-member shop. The opponents of organized labor have often used the term "open" to disguise an all-out attempt to prevent any of their workers from joining a labor organization, and in many cases to drive out or eliminate unions when and where they often existed.

In connection with the above is the issue of the "closed union." A closed union is an organization which intentionally limits its size by refusing to admit most applicants. This is accomplished through one of a number of different methods, but the most common are excessive initiation fees, setting the level of skill required of a new member at too high a level, or simply by refusing to admit a new member for any reason. One of the functions of the closed union is to so limit its members as to cause a shortage of a skill or skills on the labor market, and increase the wages of its members due to the fact that they are short supply. Needless to say, only a very strong union can hope to survive if it resorts to closed practices. Although it denies this, the American Medical Association is an example of a professional organization which utilizes closed union practices. In the field of labor, the closed union is most common in times of general economic distress.
of rules and regulations in actual practice which were closely related if not identical with the modern concept of the closed shop. An English parliamentary report of 1806, to cite one instance, made reference to the existence of rules and regulations among the clothworkers which stated that no clothworker should work who did not submit to the rules and regulations of the clothworkers' society. 3

In America, some of the earliest examples of the principle of "exclusion" are to be found in the rules and regulations of the Philadelphia Typographical Society in 1809. The Baltimore Typographical Society ruled in 1832 that no member should work in offices or shops where men or boys were hired for wages which were less than the official list of wages which the society demanded. Those workers who did not comply with this rule were not allowed to work in shops alongside the members. This was an early form of the closed shop in the printing industry. 4 By the mid-1800's, the closed shop had been fully developed by the Printers, the Cordwainers, the Tailors, and the Hatters. 5


5 Ibid., p. 33.
Following the conclusion of the Civil War, the closed shop came to occupy an important position in union policy. The ever-increasing waves of immigration from Europe and the expansion of industrial development within the borders of the nation combined to cause a number of independent unions to consolidate their forces into nation-wide organizations. By 1875, arrangements were made between the different unions of allied trades to discriminate against non-union labor, and to make the employer's whole business, not just the single shop, the unit of the closed shop. At the same time, the use of the union label on goods was advocated as a method of arousing the interest of labor in the closed shop.6

The American labor movement became an institution of national significance within three decades after the Civil War. As mentioned above, the rapid spread of industrialization and the growth of the modern corporation undermined the strength of the independent unions. The reason was obvious. In many cases the small independent unions were no longer dealing with small independent entrepreneurs, but with great corporations which were often backed by some of the wealthiest and largest banking firms in the United States, and these organizations were able to transport strike breakers at will, and employ effective blacklists.6

against those workers who were so foolish as to attempt to organize into labor organizations. In an attempt to remedy this situation, many of the unions banded together into great confederations, of which the American Federation of Labor soon became the most influential and powerful. Until this time there was little public discussion of the closed shop issue by the unions, but in 1890 the American Federation of Labor made a pronouncement in favor of the closed shop as the logical and necessary goal of trade unionism, and advised its members to require written closed-shop contracts in place of the verbal commitments which had been obtained as a general rule prior to that date.

The result of the public endorsement of the closed shop by the AFL was not an acceptance of the closed shop by a majority of employers. In 1901 the National Metal Trades Association was formed, and the main purpose given by its founders and organizers was that it would oppose the closed shop and support an "open shop" policy. This organization actively encouraged employer opposition to the closed shop, as it claimed that this type of agreement curtailed the rights of the employer. This was the first important employers' group to engage in active national opposition to the closed shop. 8

7 Ibid., pp. 42-43.

8 Harry A. Millis and Emily Clark Brown, From the Wagner Act to the Taft-Hartley Law, p. 15.
With the support of the workers involved, the United Mine Workers (AFL) attempted to meet with the anthracite coal owners in the early part of 1902 to negotiate terms of employment. The owners refused to recognize the union as the representative of their employees, and as a result of the strike which followed, President Theodore Roosevelt formed an Anthracite Coal Strike Commission, and empowered it to pass judgment on the dispute between the mine owners and the union. The terms of the agreement were not completely opposed to the cause of labor, but the commission expressly forbade closed shop practices in the anthracite industry for the duration of the contract negotiated under the guidance of the commission. Section IX of the award denied the union the right to demand the closed shop in its contract, and the report issued by the commission condemned closed shop practices.

Proof that the position of the Anthracite Coal Strike Commission on the issue of the closed shop closely paralleled that of employers' may be seen from the fact that the newly organized National Association of Manufacturers adopted Section IX of the award as part of its declaration of principles. Opposition to the closed shop was also a matter of

9Stockton, op. cit., pp. 45-46.

10Report of the President's Anthracite Coal Strike Commission, 1903, pp. 64-65.
policy at that time among such organizations as above-mentioned National Metal Trades Association, the National Founders Association, the American Anti-Boycott Association, and the Citizens' Industrial Association. These organizations were composed of employers who feared the expansion of unionism in their plants and shops, and who believed that opposition to the closed shop was the most effective method of preventing their workers from organizing unions.

The "right to work" and "open shop" drives were backed by some of the nation's largest corporations. The National Association of Manufacturers raised over $1,500,000 in a three-year period to fight the closed shop, and corporations such as the American Tobacco Company, the Macbeth-Evans Glass Company, the Baldwin Locomotive Works, the American Can Company, and Cramps' Ship Yards gave heavy financial support to the "open shop" drive.

Further complicating the position of labor in its drive to secure closed shop agreements was the generally hostile attitude of the federal and state courts. This was influenced by the fact that the unions had no clear-cut recognition as legal organizations during the early nineteenth century, and during the latter part of the century many judges believed

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11 Millis and Brown, op. cit., pp. 15-16.
that the injunction was the most useful tool of legalistic "labor relations."13 Exceptions to the general type of decision were made in New York State around the turn of the century, but these decisions had little influence on the courts as a group.14 The legal status of the closed shop received some support during World War I, when President Wilson's National War Labor Relations Board made all existing closed shop agreements permanent for the duration of the war.

After the failure of President Wilson's National Industrial Conference (October, 1919) to settle the problems which were creating industrial unrest, the employer groups renewed their attacks on the closed shop. An indication of the serious state of affairs following World War I was that in one year (1919) there were 3,630 strikes, involving over four million workers.16 There is no accurate method of

13 Ibid., p. 42.

Curran v. Galen, 152 NY 33, 46 NE 297 (1897).
(In both of these cases it was decided that the closed shop was legal if it did not create a monopoly of labor in the community.)

15 Fred Witney, Wartime Experiences of the National Labor Relations Board, p. 116.

16 Randle, op. cit., p. 31.
computing the influence of direct employer hostility upon the labor movement in the immediate post-war period, but without doubt a major contributing factor to the entire situation was the fact that many powerful employers opposed the retention or extension of the recognition which labor had received from the federal government during the war. The reaction of labor to the uncertainties of the post-war period of labor relations was to "get what it could" out of the improved numerical and financial status of the unions.

The depression of 1921, coupled with the election of an administration which was not sympathetic with labor's goals, reduced the ranks of organized labor from 5 millions in 1921 to 3.5 millions in 1923. The return of prosperity did not better the position of labor. The status of labor, in comparison to the growth of the rest of the nation, actually dwindled even more when such factors as the increase of population, the shift from agriculture to industry, and the expansion of industry are taken into account.

\[17\] Ibid., pp. 32-33.

\[18\] For a discussion of the effects of governmental policy upon union strength, see pp. 191-193, Fred Witney, Government and Collective Bargaining. Mr. Witney demonstrates the effect of adverse legal opinions and anti-union campaigns in the weakening of the union movement from 1921-1933.
The program of "welfare capitalism" which was advocated by many employers during the 1920's was aimed at influencing the worker to believe that the employer was his only true friend, and that the aims and goals of employers and employees were identical. The implication of such a line of reasoning is obvious. If the goals of employers and employees are synonymous, then any decision of the employer is for the benefit of the worker. This line of thought completely ignores the different positions of groups which are widely separated by income, background, education, mobility, and basic economic interests. It supplants any two-sided relationship with that of unilateral policy and decision making.

The position of labor decreased even further during the initial years of the 1929 depression. Between 1930 and 1933, trade unions lost over 469,000 members, and strike activity was at a minimum. Due to the poor legal position of labor, and to the fact that millions of workers were unemployed or in danger of losing their jobs and could not maintain their union membership and pay dues, there was a decrease of effective union activity. At the beginning of the depression, the American unions were in a poor economic position to support their demands and fulfill their obligations. This was to remain the status of labor until the election of Roosevelt in 1932.

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19 Handle, op. cit., p. 31.
The labor policy of President Roosevelt and the New Deal was influenced by the new attitude of the public towards labor. The depression affected all economic groups, from agriculture to the professions, and people were inclined to be much more sympathetic toward organized labor than they had been during the 1920's.

The passage of legislation friendly to union security agreements became a reality under President Roosevelt's administration and the Democratic Congress (1930) which preceded him. The Norris-La Guardia Act of 1932, the National Industrial Recovery Act of 1933, the National Labor Relations Act of 1934, and the Wagner Act of 1935, were all measures which increased and legalized labor's right to regulate its own affairs and enter into contractual agreements on an equal basis with other legally constituted organizations. These laws made possible the modern concept of union security agreements.

The Norris-La Guardia Act of 1932 stated that employees should have the full freedom of association and self-organization, and the right to designate representatives of their own choosing--free from interference, restraint or coercion on the part of their employers. 20

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20In the case of Lauf v. Shinner, 303 US, 323 (1938), the Supreme Court held that the language of the Norris-La Guardia Act did not make illegal the use of concerted action to make an employer enter in to a closed shop agreement.
In 1933, the Congress passed the National Industrial Recovery Act, which in addition to its other provisions, guaranteed the right of labor to organize and bargain collectively. In order to carry out the provisions of the Act, Congress empowered the President to establish labor relations boards. 21

On August 5, 1933, President Roosevelt established a National Labor Relations Board. The function of this Board was to try to settle strikes, including disputes over recognition, and to engage in the quasi-judicial function of interpreting Section 7 (a) of the National Recovery Act. Due to opposition by the National Association of Manufacturers and the refusal of the Budd Manufacturing Company and the Weirton Steel Company to cooperate in jurisdictional elections, the power of the Board to settle strikes was rendered ineffectual. In order to increase the power of the Board, the Congress established it by public law in 1934. The function of the Board continued to be the implementation of the provisions of the NIRA, until that law was declared unconstitutional in 1935. 22

21 Other provisions of the NIRA were those which provided for the licensing of all industry by government licenses or by voluntary codes. Part of the codes covered maximum and minimum wages, child labor laws and safety regulations. For further reference, see Harold J. Metz, Labor Policy of the Federal Government, p. 14.

22 Millis and Brown, op. cit., pp. 22-23.
On June 27, 1935, the Wagner Act was passed by Congress, and on July 5, 1935, it became law. The Wagner Act was passed in order to retain many of the provisions of the National Industrial Recovery Act which were beneficial to labor. It was opposed from the very beginning by the National Association of Manufacturers and other employer groups, which were opposed to any legislation which improved the status of labor under the law. Important to the cause of the closed shop was Section 8 (3) of the new law. It stated that a closed shop was permissible, providing that the agreement was made with the greater number of employees in a given bargaining unit, and only with an organization which was not dominated or assisted by the employer. This outlawed the possibility that the employer could make a closed shop agreement with a company union, or, in effect, with himself. The tacit approval of the closed shop as a legal agreement stimulated more widespread adoption of that form of union security.

Although the text of the Act made it appear that the closed shop was merely allowable, in some cases the Board ruled that the employer failed to bargain collectively when he refused to grant the closed shop. Two outstanding

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23 Charles O. Gregory, Labor and the Law, pp. 419-421.
decisions in this spirit were in the case of the International Filter Company and the case of Uhlich and Company.

The closed shop received added recognition during World War II. The National War Labor Board, created by the President in 1941, was given authority over all cases which involved closed shop disputes. In the interest of stabilizing labor relations, the NWLB refused to order the discontinuance of closed shop or maintenance-of-membership agreements for the duration of the war. In effect this meant that unless there was mutual consent of the parties involved, union security agreements were frozen for the duration of the war. It also meant that many employees were deprived of the freedom of changing their bargaining agents (if they so desired). It is noteworthy that this was strictly a wartime measure, and in no way was representative of the Wagner Act, which stated in Section 7 that "employees shall have the right...to bargain collectively through representatives of their own choosing."


26 In re Harvil Aircraft Die Casting Corporation, 6 War Labor Reports, 334 (1943).
Another provision of the Wagner Act was suspended for the duration in 1942, when in testimony before the House Committee on Appropriations, members of the Board stated that it was legal for closed shop agreements to be signed in industries which had not hired a majority of their employees at the time they received a contract. 27 In the following year this position was reversed but the result of the reversal was severely limited by action of Congress in 1943, when the legislative branch prohibited the Board from using any of its funds to prosecute employers who had made closed shop contracts with their employees, had made such agreements public, and had them in effect for over three months.

The closed shop was encouraged by the National Defense Mediation Board in one case, and the Conciliation Service and the Department of Labor made public statements to the effect that they both favored and encouraged the closed shop. 30


30 Ibid., pp. 151-152.
The wartime policy towards the closed shop and allied forms of union security (such as the maintenance-of-membership agreement) was aimed at eliminating union membership raiding, irresponsible organizing activities, and in promoting wartime production by stabilizing some of the most important issues in labor relations.\(^{31}\) It is generally conceded that the policy of the Board was successful in obtaining the goals desired, but a by-product of these goals was the great increase of workers under union preference agreements in the United States. In 1939, over 30 per cent of the total union membership, or over 3,000,000 workers, were covered by some kind of union preference agreement. By 1945, this had increased over 50 per cent of the total, or about 6,500,000 workers.\(^{32}\)

It was in an atmosphere of expanding union security coverage that the opponents of the closed shop staged a great campaign to convince the public and the various state and federal legislative bodies of the "inherent evils" of the closed shop. The press and radio were utilized to direct a one-sided picture of the union security situation to the public. Taking advantage of the fact that the general body

\(^{31}\) Fred A. Witney, *Wartime Experiences of the National Labor Relations Board*, p. 138.


of citizens knew little or nothing of the history or meaning of either the closed or open shop (except that one had a negative and the other a positive connotation), the supporters of the open shop tied in the argument against union security with their argument against labor in general.

The argument presented to the public was that the unions were becoming too powerful, and that under the leadership of "power mad bosses" they were attempting to "rule the country." The weapons of the "labor colossus" were supposedly the closed shop and industry-wide bargaining. Regardless of the fact that the former was almost entirely a matter of internal union security, and the latter was merely a realistic bargaining tool in the era of nation-wide corporations, a vigorous campaign was waged to eliminate these two "evils" and bring about an era of industrial peace.

The more extreme opponents of labor merely wished to eliminate the union movement--or relegate it to the position of the impotent company unions of the 1920's, but millions of Americans were convinced of the "closed shop evils" because they only heard one side of the picture. The anti closed-shop viewpoint was well summarized by a spokesman for employers, Stephen F. Dunn, a partner in the firm of McCobb, Heaney and Dunn of Grand Rapids, Michigan. He said that the political and individual freedom of the individual worker were endangered by closed shop agreements, and he mentioned
these specific objections to such contracts. The closed shop was objectionable because:

1. It is contrary to the American principle of the freedom of the individual to join or refrain from joining any organization, whether it is a union or not.

2. The right to work should not be conditional upon membership or payment of dues to any organization.

3. Employers are prevented from exercising their fundamental right to hire the best man for the best job.

4. Employers cannot obtain skilled workers whom they need, because they often will not join the union.

5. Relieved of normal organizational activity, the union is apt to seek management authority.

6. It is conducive to irresponsible union leadership, since the union need no sell itself to maintain membership support, yet it has complete power over employees in the bargaining unit and often a monopoly in the labor market.

7. History reveals that union security does not contribute to labor peace.

8. The security obtained by the union is at the expense of compulsion exerted on the employees themselves, who are the principals.

9. The rights of the minority are disregarded. A mere majority should not exercise such drastic control over individual employees, on threat of loss of their jobs. 34

A brief analysis of these objections reveals that they are based more upon bias than upon the facts and history of labor relations.

The first objection, that there is an American principle which guarantees an individual the right to join or not to join an organization, is used to support the position of those individuals who claim that they are discriminated against because other individuals, who have organized a union, and derived certain benefits from that organization, do not extend those benefits to them. Even though the outsiders may refuse to join or support the group, and may even oppose it, the group is being discriminatory—or so goes this line of reasoning. Of course, this type of thinking would invalidate the benefits of association in almost every kind of social, economic, religious, or political organization. Furthermore, if the reasoning were completely consistent it would be applied to all kinds of organizations, and not merely to unions. Employer associations would not be justified in denying the allegation that they were discriminatory because they did not extend the benefits of membership in their organizations to every employer who wanted to enjoy those benefits, regardless of membership, and in the same way, unions claim that they are within their rights in restricting the benefits of membership to their members.

Another aspect of the argument which concerns the "right to join or not to join" has a certain amount of validity when applied to the "closed union." If there is no alternative to union membership, and union membership is not available to qualified people, an individual would be
forced by economic pressure into joining the union. In a situation of this type it would be understandable that an individual would consider his traditional rights and freedoms restricted. This would be possible only in an industry or in an occupation which was completely controlled or in which membership in a certain organization was a vital necessity for earning a livelihood. However, it is the contention of legal experts that the "right not to join" is made to sound a great deal like "the right to join," but there is a distinct and definite difference. The "right to join," is similar to the constitutional right of assembly, but the "right not to join" is not an equivalent. The "right" is the prop of the "free-rider," who will be discussed later in this chapter and is actually the "right" to employment without filling all of the terms of employment.35

The second argument, the so-called "right to work," implies that every citizen possesses a basic right to work at the place of employment which he may choose, and at the type of work which he may prefer, regardless. The facts are that such a right is not stated in the American Constitution, that employers as well as closed shops restrict a worker's choice, and that the personal qualifications of a worker automatically limit such a "right." To be specific, although the Fourteenth Amendment to the Constitution defines

the right of an individual to be free from arbitrary discrimination, and to be upon equal terms with others in similar circumstances, another principle has been well defined by the Supreme Court. That principle is that a hoped for job does not constitute property, and that diversion of that job from a non-union to a union worker contains no invasion of any fundamental right. It has also been established that benefits derived from association may and should be restricted to the group by its members, so long as membership is open to all who may wish to join. In other words, there is nothing unconstitutional about the closed shop, it is the closed union or closed organization which violates the rights of a free individual, if it refuses him the privilege of membership, even though he may meet all the requirements of membership. As in the first objection to the closed shop, it is seen that the basic objection is to the closed union, a distinct and separate kind of arrangement. In the above mentioned decisions of the Supreme Court it is found that there is a precise legal line drawn between the two, and that there has been no substantiation of Mr. Dunn’s viewpoint by the courts. In addition, it is interesting that employers are among the most important opponents of


such a "right" as the "right to work" when "fair employment practices" are proposed. This type of legislation would merely guarantee such a right to all, that there would be no discrimination against employees or prospective employees for any reasons except moral or physical limitations, so long as the worker met the requirement of the hoped for job.

The next two opinions are of a highly doubtful nature. The statements that the employer cannot hire the best man for the best job and that he cannot get highly skilled men because they often refuse to join the union are both directly connected with unionism *per se*. The unions say that many employers often base their hiring on a compromise, that is, which man will work for the lowest amount at the highest level of skill, and which man they can obtain at the highest possible level of skill who is a non-union member. Most highly skilled men, because they have had to rise through an apprentice system, are members of labor organizations. Employers could conceivably use this argument to cover overt anti-union actions, if they were so inclined.

The opinion that the union is likely to seek management authority if it relieved of normal organizational activity, is disputable from the standpoint that the organizational function of the union is merely a preliminary to its true purpose, *representation* of the workers in collective bargaining agreements and the establishment of fair wages and
working conditions. In other words, Dunn implies by this statement that he does not consider that the "normal function" of the union can exceed the organizational stage, and that collective bargaining and representation are usurpings of the management function.

The issue of the union not needing to sell itself to its membership when a closed shop agreement exists would seem to be only a partially accurate statement of the issue. Although a condition might exist in which a labor leader might so completely control an organization as to resort to one-man rule, the vast majority of unions under closed shop agreements are democratic in nature, and elect their officials and decide upon policies on a voting basis. As elected officials, the officers of a union must base their hopes for re-election on their records and their past performance in union activities, and possibilities for election and re-election are slim if their records have not been commendatory.

The question of "labor monopoly" should be considered in connection with the low percentage of American workers who are actually members of labor organizations. With only sixteen million American union members, out of a working force of over sixty millions, there is little danger of a labor monopoly, even in fields of work which are highly unionized. The intense jurisdictional rivalries which

\[38\] If the question of monopoly is to be given full coverage, it would be fair only to consider to what extent
exist between American unions almost eliminate the possibility that a labor organization could so entrench itself as to exercise dictatorial powers over its members and retain control of the situation. It would not be completely fair to assume that because workers in a particular union have common interests and support their organization that they are subject to dictatorial controls. In other words, the solidarity of a union is not a sole test of its internal government. It would be far safer to assume that an organization subject to internal totalitarian techniques would be low in morale and would fail to obtain the active support of its membership. Union members under a closed shop agreement have the option of withdrawing their membership and changing their place of employment if they so desire, and through the democratic processes of elections have the opportunity to change their leadership and their policies.

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the industrial resources of the nation are monopolized by management. In Chapter II figures are given which demonstrate the control which a relatively small number of corporations exercise over the American industrial scene. This is not mentioned with the purpose of rationalizing a "labor monopoly" in terms of an "equal monopoly" by management. Such a contention would be self-contradictory, since a monopoly defines a situation of complete or near-complete control by one group or party. It is merely given to demonstrate that the control exercised by a small number of corporations in American industry greatly exceeds that of labor. The financial resources of the two groups are so unequal as to eliminate any serious charge of labor monopoly. Furthermore, the broad divisions of labor, between craft and industrial unions, between independents and internationals, and conservative and liberal organizations are highly effective in eliminating any possibility of labor monopolies.
In the contention that history reveals that union security agreements do not contribute to labor peace, it must be recognized that this is a point of view which with proper semantic evaluation may be quite true. If as in Mr. Dunn's statement concerning the "normal organizational activity" of labor organizations, the definition of the "true function" of labor organizations is restricted so as to preclude any collective bargaining or representational processes, union security agreements would not only refrain from contributing but would be disruptive factors in labor relations. This would mean that any activity on the part of labor organizations beyond the organizational stage would interfere with labor relations. To carry this to its logical conclusion, the existence of labor unions would be a factor which destroyed the "peace of labor relations." The wording of Dunn's statement is significant. He does not say "the closed shop" but "union security," which places him in the position of refuting the value of any kind of union security agreement.

The argument that the security obtained by the union is at the expense of the freedom of the members is similar to that which has been raised against almost every type of democratic organization or government at one time or another. The allegation of compulsion raised by Dunn is based on the assumption that the members of a union are forced to give up some of their basic rights in order to remain members of
the organization. This is a negative treatment of the subject, based on the assumption that union membership is synonymous with coercion. An individual has a perfect right under the Constitution to limit his field of choice, whether it is that of a business partner, a representative in Congress, or a labor organization. Such a limitation of choice would not seem to entail coercion or the surrendering of basic rights. Partners in a business enterprise, furthermore, would not consider it unfair to limit their choice of an additional partner/or partners. The mere possession of sufficient capital and know-how would not be considered as automatic qualifications, yet such an individual would be perfectly within his rights to form or join another firm to engage in a particular economic activity. A partnership is in effect a closed organization, much more similar to a closed union than to a closed shop, yet it does not seem that when a partner is admitted to a firm he is treated unfairly if he is expected to conform to the policies and mode of operation already existing. It is a matter of choice—not a matter of coercion. Although not to such an extreme degree, members of a closed shop expect a new member to conform to majority rule, even though they are quite willing to admit new members if they possess sufficient skill and the desire to be union members. The internal life of the union is based upon the principle of the transfer of authority from the individual
to his representative, which is common in elected representatives. As long as the individual retains control over the representative he has not given up any of his basic rights. The principle of freedom includes this basic right of the individual to select his representative, and is almost diametrically opposed to the principle of minority rule or of coercion.

The question of the fairness of majority rule, the last point in Dunn's objections, is basic to any belief in the principle of democratic rule. His contention is that the ability of the majority to make and enforce regulations, policies and activities violates the rights of the minority. However, there is a point which Mr. Dunn does not make. If it is unfair for the union to exercise some degree of control over the job, when it represents the majority of the workers, is it not also unfair for the employer in an enterprise to control the job situation? The employer is a minority, yet he often controls the means of livelihood of the majority. The answer would seem to be that the employer has a right to exercise a certain amount of control over the job and the worker because of the interests which he has involved in the business. The same argument, of course can be used to demonstrate that the union has some right to control certain aspects of the job, since the income of its members and its further existence are involved. Also, it may be noted that
the government and principles of this nation are based upon the tradition of majority rule, and that although the rights of the minority are preserved, the minority's opinions are not higher than the decision of the majority.

The entire matter of the closed shop has been so twisted and turned by semantic gymnastics that it is well worth while to heed the opinion of an expert in the use of language, Professor Alfred D. Sheffield of Wellesley College:

...When disputants (in collective bargaining) stand out for a 'right,' they say that they are doing so 'on principle.' The word principle evidently puts the motivation all on a high plane. It sets the status of a right above that of any interest which submits to social evaluation—here viewed as processes of 'expediency' and 'compromise.' The risk in any appeal to 'principle' is that it may dispense with any further social thinking. It tends to put a complex problem into terms which make one's preferred answer become that which it is simply wrong not to do.... Talk about the 'right to work' is commonly heard in arguments over the 'closed shop' phrase that serves to stir feeling more than to advance thinking....

In the case of the closed shop, a very complex problem was simply ignored by expounding on the so-called "right to work" until all opposition to the "principle" was over-ridden. "Social thinking" was conspicuous by its absence, and for that matter, still is. Many citizens accepted the "principle" of the "right to work" argument without the slightest consideration as to the inherent connotation of such a "theory." If the argument is to be consistent it

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must oppose union security in any degree, as all forms of union security include some form of agreement between the worker and the union which would limit him from dealing with the employer on an individual basis. From this standpoint the union shop is as illegal as the closed shop, and the elimination of the closed shop is the first step in the attainment of the National Association of Manufacturers’ "American Open Shop Plan" of 1903. In other words, the logical result of this "philosophy" is the complete elimination of the union as an effective representative of the union as an effective representative of the employees in collective bargaining. Applied to all parties, the "right to work" would also restrict the employer’s right to discriminate in the hiring and firing of workers. In this situation, what is valid in the case of the union is equally true in the case of the employer.

The history of labor management relations in the United States has convinced the majority of union members that management would destroy their organizations if it had the opportunity, and if the employer were free to hire and retain non-unionists in the normal course of labor turnover, it would only be a question of time until the unions would disintegrate. Also, the anti-union "open shop" is an opportunity for an anti-labor management to hire industrial spies and other undesirables. "No shop can long continue
half-union and half non-union unless the employer is sympathetic to unionism."

The question might be asked, "Have not the unions now achieved a position of permanence and prominence which would preclude any attempts to eliminate them?" The answer is that the mere recognition of the union by the employer as the bargaining agent for the workers is weakened if the union is not in a position to prevent breaches of collective bargaining agreements. If the union is unable to perform this basic duty, it will lose members and its life will be limited.

The unions have maintained that the closed shop is the foundation of true union security, because it performs these functions:

1. Provides skilled and trained workers
2. Gives a partial guarantee of efficiency
3. Stabilizes employment
4. Stabilizes labor costs
5. Eliminates "free riders"
6. Assists in maintaining discipline
7. Makes possible the assumption of responsibility by the union.

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\[41\]
Millis and Brown, op. cit., p. 436.
The unions say that these factors are of as much importance to management as they are to labor, and that alert and progressive management is in a position to benefit from the results of every one of these advantages.

The provision of skilled and trained workers is of vital importance in fields of intermittent employment, such as the construction and maritime industries, where large numbers of both skilled and competent men must be available in specific places for temporary and sometimes indefinite periods of time. It is extremely difficult for individuals who are employed by federal, state, or private employment agencies to determine levels of skill and estimate the degree of training possessed by individuals who specialize in highly developed crafts or trades. The most competent people to make these estimates are members of the trades or crafts in question, and often the membership and classification of individuals by their unions is the only accurate manner of establishing the capabilities and past records of individuals. Furthermore, the apprentice systems of many unions are the only means of training individuals in jobs which are not of long duration and which are subject to a high labor turnover.

On the other hand, opponents of the closed shop say that the control of training and apprentice systems by unions tends to limit the number of skilled workers available. They charge that many unions intentionally limit new
members, with the objective of bettering their bargaining power and raising their income.

Often employers receive their only guarantee of efficiency on specific jobs from the fact that only well qualified individuals are certified by the unions for most skilled jobs. When expensive machinery, materials, or operations are involved on funds limited by competitive bids or planned budgets, this is of vital importance. In industries of intermittent employment the time factor is often of prime importance, and without this partial guarantee of efficiency it would be almost impossible to undertake a contract or agreement to complete or accomplish a job within a definite time. In addition, the union, as a going concern, has a vested interest in maintaining standards of efficiency which are considerably above those of non-union workers. If this were not true it would be extremely difficult for labor organizations to maintain contractual agreements with employers, since it would be more profitable for them to hire non-union people.

In the absence of union control, employers sometimes encourage the maintenance of large labor pools, more than sufficient to meet their maximum needs. Of course, this results in casual employment for many workers, with a social problem of unemployment which is paid for by the general public. Union control, on the other hand, stabilizes employment on important jobs, by guaranteeing definite wages and
working conditions far in advance of the job. In addition, labor turnover is reduced to a minimum because of fair recognition of seniority rights and levels of skill. Workers are encouraged to stay on their jobs and employers are more inclined to eliminate lay-offs and discharges except for just cause, because the conventional grounds for disagreement are eliminated from the onset of employment by agreements between employers and unions.

When employers know the cost of labor far in advance they are able to intelligently plan their work, both for the benefits of their employees and the protection of their business risks. When it is impossible for the employers to make some agreement with the union in advance, or when they must rely on non-union labor, this factor of cost becomes an unknown and unpredictable element in bidding on a given job. The only way that this risk may be eliminated is through the "jacking-up" of the cost to the consumer, who must cover the uncertainty involved. The general public often pays the cost of non-union labor. In many cases, the cost of delays in operations due to the non-availability of skilled labor may result in an actual loss to the employer.

In addition to the basic issue of union survival in the union closed shop, the "free rider" has been one of the most significant issues involved. There has always been resentment against those individuals who have been willing to enjoy
the beneficial terms of employment which have been the re-
sult of union security, but who are unwilling to associate
themselves with the union, often denying it moral as well
as financial support. Some of these people have opposed the
union because the rewards of promotion and financial benefits
have often accrued more quickly for those who took the manage-
ment as opposed to the union viewpoint. Often the "free
riders" have been sincerely motivated in their opposition to
unionism, but unionists point out that this has not changed
their usefulness to employers who were trying to drive out
or destroy organized labor.

Closely related to the "free rider" question is
the issue of internal union discipline and responsibility:

A good many employers find that a (closed)
union shop is conducive to responsible unionism and
improves labor relations in general. They hold that
a strong, secure union is easier to live with than
one which is tormented with anxiety over its sur-
vival. A plant whose work force contains a sizable
force of non-unionists is often strife-torn and low
in morale. A union cannot maintain effective dis-
cipline and devote itself to constructive labor re-
lations unless it controls all the workers. 42

Again, the unions state that the advantages of the closed
shop are as important to the employer as they are to the
worker.

Union security agreements have long been recognized
as performing a democratic function in the field of indus-
trial relations. The unions consider the agreements as

42 Daugherty and Parrish, op. cit., p. 319.
expressions of the democratic principle of majority rule, and the sharing of responsibility of the minority in return for benefits received. Such agreements prevent the lowering of standards by the competition of non-union labor, and prevent discrimination against union members. Raiding of membership by rival unions is prevented, and a sense of security is created which allows union leaders to spend more time in the administration of collective bargaining agreements.

It would be unfair and inaccurate to state that all employers have opposed the closed shop. Sympathetic management has long contended that the existence of a closed shop tends to eliminate much of the basic friction between

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43 Congressional Record, 3551, United States Senate, House of Representatives, April 15, 1947. Remarks by Mr. Madden.

44 An indication of the widespread acceptance of the closed shop was the high percentage of such agreements which were in existence in 1946. Of unions which were covered by union security agreements, 33 per cent maintained a closed shop; 17 per cent a union shop; 25 per cent a maintenance of membership shop; 3 per cent a preferential shop; and 22 per cent an open shop. Monthly Labor Review, May, 1947, p. 767.

45 The results of a poll conducted by the National Foremen's Institute (a management association) early in the spring of 1947 indicated that out of one thousand employers who were parties to closed shop agreements, only 14 per cent believed that the effects were harmful. On the other hand, 19.2 per cent said that it had improved labor relations, and nearly 70 per cent said that it had not affected labor relations very much in any way. New York Times, February 23, 1947.
management and labor. There has come into existence the so-called Golden Rule of Management: "Management wants survival, expansion, and prestige. So does the union as an entity. Give the union with sincerity what it wants, and it will respond by giving management basically what it wants."46

Examples of companies which took this position were the Ford Motor Company and the Kaiser Corporation:

When the Ford Corporation came around to the point where it finally decided to bargain with the UAW-CIO, it agreed to a closed shop...even before the union negotiators had an opportunity to make out an aggressive case. One of the reasons Ford did so was that in this way it felt that it could count on the union to be fully responsible for committing all Ford workers....Henry Kaiser negotiated a closed shop agreement with the AFL of L metal trades unions in his Pacific Coast shipyards simply because of his conviction that he could build ships more efficiently that way. 47

In concluding the discussion of the historical development of the closed shop, it must be stated that factors which were not directly connected with unionism influence the labor movement in its support of maximum security agreements.

46 Clyde E. Dankert, Contemporary Unionism in the U.S., pp. 352, 487. The "Golden Rule" was not the only basis for such decisions. Some cases exist in which employers who had long and outstanding records of anti-unionism abruptly and completely agreed to closed shop contracts, and in many cases it was believed that the motivating factor was fear of the CIO.

47 Jack Barbash, Labor Unions in Action, p. 86.
In the United States... the presence of great numbers of immigrants, the relatively ample opportunities for workers to rise out of the ranks of labor, as well as other social and economic factors, made the feeling of class solidarity impossible. Threatened on one hand by those who were willing to accept low wages and a long working day, because they considered their position as wage earners only temporary, and on the other hand by new groups with lower standards of living, most American trade unions saw in the closed shop their only protection. Their policy, therefore, is not to be explained as a mere desire to force non-unionists to pay their share of the costs and sacrifices involved in maintaining organizations and improved facilities. 48

Although it is not commonly acknowledged, in one sense the closed shop is merely the equivalent of similar practices by other groups in the economy. The "licensing" examinations and fees of professional groups such as doctors, lawyers, architects, morticians, etc., are restrictive practices in much the same manner as are the examinations and fees which trade unions require of their members before they can practice their trades under closed shop agreements. Actually, the regulations of professional groups are made by unofficial professional societies, which regulate the educational programs, establish the codes of ethics, select or pass upon the qualifications of an applicant for entry into the required courses, maintain the standards and procedures for such professions, and

in reality control the state boards which carry on the official regulation. Many states and municipalities have resorted to licensing such groups as plumbers, electricians, bakers, painters, building workers, etc. as the only effective method of protecting the public from defective or dangerous workmanship. In many communities, close cooperation between labor and government has set the standards for these trades. The advocates of the closed shop wonder why restrictive codes of regulation, conduct, and membership are laudatory when applied to professional groups, but undemocratic when applied to the unionist. However, this question was resolved by law in the halls of Congress when the anti-closed shop campaign came to a climax during 1947.
CHAPTER II

PASSAGE OF THE TAFT-HARTLEY LAW AND THE CASE OF
THE INTERNATIONAL TYPOGRAPHICAL UNION

The controversy in the press and over the radio concerning the "labor problem" mounted as a wave of strikes swept the United States in 1946. Many of these strikes represented reactions to the frustrations and restrictions of the highly organized and strictly controlled wartime economy and labor market, but most of them also contained demands for wage increases to cover the increased cost-of-living expenses which resulted from the elimination of wartime economic controls. Union members were concerned over the possibility of an economic recession or of excessive inflation, either of which would adversely affect labor.

1 It would be interesting to establish the connection, if any, of the drive to disregard wartime economic controls and the support of restrictive anti-labor legislation. It is clear that the same parties who campaigned vigorously for the elimination of price controls, for instance, were in many cases the leading supporters of Taft-Hartley legislation. Did these parties hope that through the elimination of economic controls there would result a wave of labor unrest? Did they depend upon this unrest to convince the public that restrictions upon the powers of labor were needed? Or did they merely take advantage of a situation which was highly favorable to their aims and goals?
Demands for tighter union security provisions were considered as a necessary part of the campaign to retain the gains made by labor during the war. Employers, on the other hand, recognized the elimination of wartime regulations as an opportunity to rid themselves of bothersome union security agreements, which had been frozen for the duration of the war as a matter of governmental policy.

The post-war strikes were not limited to any particular sector of the economy, but spread through manufacturing, transportation, communication, mining, service industries, construction, and almost every other conceivable type of economic activity. The unions which called for and led the strikes represented every kind of labor leadership and membership—liberal, conservative, and radical—and these unions were of every type of organization—craft, trade, independent, international, and industry-wide.

2 Wartime policy regarding the closed shop is discussed in Chapter I of this study.

3 The percentage of compensation of employees of the total national income in the U.S.A. remained fairly constant from 1940 through 1946. (U.S. Dept. of Commerce, Survey of Current Business, February, 1949, Table 3, p. 9.) The index of consumer prices, the cost-of-living index, which is the most accurate yardstick for the evaluation of real wages, rose from 190.2 in 1940 to 139.3 in 1946. Food rose from 96.6 to 159.6, and wearing apparel climbed to 160.2 from 101.7. The significance of food and apparel is that these are basic items. United States Department of Labor, Handbook of Labor Statistics, 1947 Edition, Bulletin No. 91, Table D-1, p. 107.
The election of a Republican majority to Congress in 1946 after the "had enough?" campaign, was interpreted as the go-ahead signal for the drafting of legislation which would limit the powers of labor. On January 23, 1947, the Senate commenced its hearings before the Committee on Labor and Public Welfare. The House of Representatives conducted its hearing before the Committee on Education and Labor from February 5 to March 15. On April 10, Representative Hartley introduced House Resolution 3020. After passage of the Bill it was sent to the Senate, and introduced by Senator Taft. After substitution of some of the language of the Senate Bill for that of the House Bill, in a Joint Conference, the Taft-Hartley Bill was passed and sent to the President. Mr. Truman's veto was received by the House and Senate on June 20, but was over-ridden by the Congress.

The original intention of the framers of the Taft-Hartley legislation was to outlaw both the closed shop and industry-wide bargaining. The provisions prohibiting industry-wide bargaining were removed, but the anti-closed shop group was successful in its drive to eliminate the legal status of maximum union security provisions. An

example of the attitude which was widely held by many of the
supporters of the legislation was the opinion of the Con-
gressman from Missouri, Mr. Schwabe:

...A lot of union leaders have as a goal the uni-
versal closed shop, but we are fearful of what that
would lead to in this country...

There are two weapons that enable unions to con-
trol or fix prices and wages and working conditions
and do it on a national scale. One is the closed
shop and the other is industry-wide bargaining.
They are the two eye teeth in this bill. They are
the two things we must take care of in this bill,
or else it will be a milk-toast affair. 5

In very simple and open language, this statement reveals
the principal objections of anti-union forces to the closed
shop. The desire to prevent unions from influencing wages
or prices, or from having control over working conditions,
is simply another way of stating opposition to unions
in any form, since these are logical goals or functions
of the union movement. In other words, the objection-
ability of the closed shop and industry-wide bargain-
ing was in the effective power which these things gave
unions in their relations with employers, and not in their
ethical, moral or constitutional aspects.

The actual wording of Section 8(3) of the Labor
Management Relations Act of 1947 is as follows:

593 Congressional Record, 3547, U. S. Senate, House
of Representatives, April 15, 1947. Remarks of Mr. Schwabe.
(The italics are the writer's.)
Unfair Labor Practices

Sec. 8. (a) It shall be an unfair labor practice for an employer:
(3) by discrimination in regard to hire or tenure of employment or of any terms or conditions of employment to encourage or discourage membership in any labor organization; Provided, that nothing in this Act or in the National Industrial Recovery Act (U. S. C., Supp. X, VII, title 15, secs. 701-712), as amended from time to time, or in any other code or agreement approved or proscribed thereunder), any other statute in the United States shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8 (a) of this Act as an unfair labor practice) to require as a condition of employment membership therein on or after the 30th day following such employment or the effective date of such agreement, whichever is the latter, (1) if such labor organization is a representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreements when made; and (ii) if, following the most recent election held as provided in section 9 (a) the board shall have certified that at least a majority of the employees eligible to vote in such an election have voted to authorize such labor organization to make such an agreement; Provided further, that no employer shall justify as discrimination against an employee for non-membership in the labor organization (a) if he has reasonable grounds for believing that such membership has not been available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership.
(4) to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act.
(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 7 (a).
(b) It shall be an unfair labor practice for a labor organization or its agents:
(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7; Pro-
vided, that this paragraph shall not impair the rights
of any labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances; .... etc.

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership.

The portion of the preceding section of the Taft-Hartley Law which is underlined is that which was added to the original wording of the Wagner Act. No significant portions of the original were deleted, but the portion added was sufficient to change the meaning of the Act. These additions were designed to outlaw the closed shop and legalize a restricted version of the union shop. These purposes were served by modifying Section 8 (a) (3), which under the Wagner Act permitted agreements requiring union membership as a condition of employment. This effect was achieved by the addition of the phrase, "on or after the 30th day, etc." which changed the sanction from the closed to the union shop.

In addition to the above mentioned union security provision, a provision was made in the new Law which had almost no parallel in the tradition of democratic balloting in this nation. In Section 8 (a) ii, the Law states that in order for a union shop to be legal "at least a majority of the employees eligible to vote in such an election have voted to
authorize such labor organization to make such an agreement."

In reality, what this means is that votes not cast are counted as being in opposition to the proposed union shop, regardless of the opinions of the non-voters. This was another reason why many union supporters considered the closed-shop ban and the union-shop provisions of the Taft-Hartley Law as being anti-labor actions.

In the words of a union analysis, the union shop provisions of the Taft-Hartley Law

...gives management the right to force upon the union all sorts of undesirables, troublemakers, dual unionists, company stooges--and denies the union any real right to keep them out, so long as they are willing to pay the initiation fees and dues. Of course, the union is not obliged by law to take in or keep such members, but if they are refused membership or expelled for any reason other than non-payment of dues, the company is not obliged to fire them as it was under the real union shop

...The real intentions of those backing the union security restrictions of the Taft-Hartley Law are revealed by the provision which says not even the Taft-Hartley union shop or maintenance of membership will be protected in states which have passed laws ruling out union security completely.

In other words, the law's sponsors having gone as far as they dared in restricting union security, invited the states to finish the job by denying it altogether. If the states do, the federal government will step aside and let the states take over. No such permission was granted to states which may wish to provide more liberal forms of union security.

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The Truth About the Taft-Hartley Law and Its Consequences to Labor, International Association of Machinists, Education Department, 1948, p. 11.
In his veto message to Congress, President Truman stated his objections to the anti-closed shop provisions of the Taft-Hartley Bill:

...[1] The bill would limit the freedom of employers and labor organizations to agree on methods of developing responsibility on the part of the unions by establishing union security...

...In this respect, the bill disregards the voluntary developments in the field of industrial relations in the United States in the past 150 years. Today, over 11,000,000 workers are employed under some type of union security contract. The great majority of the plants which have such union security provisions have had few strikes. Employers in such plants are generally strong supporters of some type of union security, since it gives them a greater measure of stability in production. 7

In the opinion of the President, closed-shop and union-shop agreements actually performed a useful function in stabilizing industrial peace and eliminating needless friction from labor relations.

Supporters of the Taft-Hartley Law were even more emphatic in their argument that anti-closed shop provisions would protect the workingman from being exploited by union officials. In the words of Representative Gwinn of New York:

...The American workman who was once free has been cajoled, coerced, intimidated, and on many occasions beaten up for the alleged good of the group he was forced to join. His whole economic life has been subject to the complete domination and control of the

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unregulated monopolists. To get a job he has been forced to join these groups against his will because he feared them. At other times when he has desired to join a union group which he has trusted he has been forced to join one which he has mistrusted. He has been compelled to pay assessments for causes and candidates for public office which he opposed. He has been shut up in meetings and fined or expelled for expressing his own mind about right or wrong on public issues. He has been denied the right to arrange the terms of his own employment. He has frequently, against his will, been called out on strikes and violence which have resulted in wage losses representing years of his savings. He has been ruled by Communists and other subversive influences because he has no right to vote. In short, his mind, his soul, and his very life have been subject to a tyranny more despotic than one could think possible in a free country...

After doing his best to convey the impression that union membership under the Wagner Act had been synonymous to living under the heel of the MVD in Soviet Russia, he explained that:

...This bill is designed to break up the organization of monopolistic-group control over the individual’s freedom to contract for the exchange of his own goods and services. It should protect the rights of the willing buyer and seller in a free market. It should stop the exercise of power of any group over the individual to the point where the group controls the number who can work, the amount of production, and fixes monopolized prices in its organized effort to exploit the public generally for the benefit of the group itself. It should stop the growth of the group in its compulsory unionism as it stopped monopoly group power of industry 50 years ago. It recognizes and deals with the dangerous expansion of unionism into a kind of labor cartel, a complete monopoly. 8

8 93 Congressional Record, 3553-3554, April 15, 1947, U.S. Cong., House of Representatives. Remarks by Mr. Gwinn.
Representative Gwinn's implication that congressional action eliminated business monopoly "50 years ago" is not too accurate. In 1947, the same year as the passage of the Taft-Hartley Act, a government report shows that 113 corporations, with assets in excess of $100,000,000 each, owned 46 per cent of the total net capital assets in the United States. These assets included plants, property and equipment for all manufacturing, both corporate and non-corporate.

It is interesting to note the difference in Mr. Gwinn's argument from that of President Truman's veto message. While the President appealed to the rationality in eliminating a form of union security which was widely accepted and which performed definite functions, Mr. Gwinn depended upon the emotional technique, with a constant use of emotion-packed words and phrases, such as: "cajoled, coerced, intimidated;" "beaten up;" "alleged good of the group;" "forced to join;" "complete domination and control of unregulated monopolists;" "against his will;" "forced to pay;" "shut up;" "fined;" "expelled;" "denied the right;" "ruled by Communists;" "other subversive influences;" "subject to tyranny;" "compulsory unionism;" "dangerous expansion of unionism;" and "labor cartel." Such a method is often quite effective, for it.

appeals to emotion rather than to reason. It can be understood how individuals not acquainted with the labor movement and the operation of the closed shop could be easily swayed by this kind of language. The assumption that the closed shop is a monopoly, that the working man is forced into the closed shop (and presumably the union), and that the worker is the victim of dictatorial rule were discussed in the previous chapter.

Although many supporters of the Taft-Hartley Law maintained that they were not anti-labor, and only desired to equalize responsibility between labor and management, some expressed their hostility to organized labor in such a way as to leave no doubt as to their real attitude toward the union movement. It was language such as the following which created fear and apprehension in the ranks of labor. Consider the remarks of Representative Hoffman:

...And the union man? What of him? Time and again the union man has been fired from the union because he did not go along with the men who were in control of his union. There are cases in the books, decisions by the National Labor Relations Board, decisions by the courts, that the courts have had to come to the rescue of the men that this law, the National Labor Relations Act, was designed to protect, where they had come to his rescue to protect him from the union itself when he ventured to express an opinion which some crook in the union office made it hot for the real worker...I am talking about the union man who was denied free speech and a job—who could not go to his job because of the closed shop situation, and in many cases where the union boss tried to impose his will...

...the only one who is condemned in this bill is the racketeer, the extortionist, the man who is hiding
behind the cloak of unionism, masquerading as a union official, but who is, after all, nothing but a crook carrying on a crook's business and living upon legitimate business, oppressing the poor, oppressing those who must work, and doing it by assuming the role, masquerading as a union official...

...These men were crooks—they are crooks—they always will be crooks, because their business is crooked, and if they were deacons in a church they would still be crooked. This bill is designed to get them to give to the real workers—to the union man—the protection that he needs, to give the public the protection to which it is entitled.10

The accusation in this remarkable piece of rhetoric that the closed shop was a "crock's business," and the implication was that the "real worker" would accept the Taft-Hartley legislation as an Emancipation Proclamation. The validity of these contentions can be examined in the light of the outstanding cases which came before the National Labor Relations Board regarding the closed shop ban of the Taft-Hartley Law.

Although closed shop contracts were widespread throughout the economy, they were more basic in certain industries than in others. Printing, shipping, and construction—they were the traditional basis for union organization and

10 93 Congressional Record, 3558, U. S. Senate, House of Representatives, April 15, 1947. Remarks of Mr. Hoffman.

11 These outstanding cases are those which decided the legal fate of the closed shop and union hiring hall in the printing, maritime, and construction industries.
existence. In these industries the closed shop was approved by employers, in general, because it provided a dependable and acceptable source of trained and experienced labor. Without the closed shop, which allowed the costs of labor to be determined in advance, it was almost impossible for an employer to make an accurate competitive bid on a specific business operation. Employers in these industries who favored the closed shop agreed that workers who had common ties in union membership made for a cohesive and dependable labor force. The granting of complete security privileges to unions tended to eliminate any ill-founded suspicion that management did not respect the union or undertake collective bargaining in good faith. Unions in these industries supported the closed shop as the most effective means of guaranteeing equitable treatment for their members under conditions which were peculiar to particular industries. Through the closed shop, working conditions and wages could be stabilized to determine fair standards. Transient workers were assured of dependable union representation and of fair employer treatment in any locality or from any employer who was party to a closed shop agreement. The Taft-Hartley Law struck at the heart of these time-proven assurances and agreements. The result was inevitable—a struggle to enforce the closed-shop ban against employers and unions who were in favor of maximum union security.
The first industry to feel the impact of the Taft-Hartley closed-shop ban was the printing industry, and the union involved, the International Typographical Workers' Union, was one of the oldest and most respectable labor organizations in the United States. The importance of printing among small unit industries in America is often unrecognized. Printing is the largest industry of small unit manufacturers in the nation, with over 28,000 employers and more than 700,000 employees. There are six major unions in the printing industry, but the oldest and one of the most important is the above-mentioned International Typographical Workers' Union.

Representing over 90,000 workers in the printing industry, the ITU came into headlong collision with the closed-shop ban of the Taft-Hartley Law. The reason for this was that the ITU had maintained closed shops in its contracts for more than 100 years, and until the passage of the Taft-Hartley Law negotiated such agreements in all of the shops under its jurisdiction. Although the case of the ITU began in 1947, the issue was not decided by the National Labor Relations Board until 1951. In the four intervening years, the issue of the closed shop was fought out in "economic" strikes, injunctions, NLRB decisions, and in the decisions of the federal courts. The cases involving the ITU and certain employer groups demonstrated how the closed shop was of vital
significance to both employers and employees in the printing industry. This was true because of the particular traditions and conditions which were involved in the printing industry.

The bulk of the printing industry is composed of small and highly competitive shops. The largest single item of expense which printers have is the cost of labor. The possibility of storing their products is very limited, since their products are manufactured for a timely and specific demand. Employers who cannot practicably or legally get together for the purpose of setting prices find that through agreements with strong international unions, which are organized along craft lines to allow for the multitude of operations necessary to printing, they are able to set a foundation for fair competition. The entire cost structure of the printing industry is so complex that it is understandable why employers gratefully accept the closed shop as a method of equitably stabilizing one of their major factors of expense. 12

Aside from questions of financial gain, most master printers have been and are sympathetic with the cause of unionism. As proprietors of small establishments, they

were often members of a union before going into business for themselves, and would return to work as union printers if their private ventures failed. For this reason, and due to the suspicion between rival printers because of the highly competitive nature of their business, many master printers have felt a much greater loyalty to the local union shop than to their fellow employers.

Most of the opposition to the closed shop in the printing industry has originated in the newspaper associations. The American Newspaper Publishers Association has been particularly outspoken in its opposition to the closed shop in any form, and some time before the passage of the Taft-Hartley Law formed an "open shop committee" to aid employers who wished to fight closed-shop demands or end closed-shop agreements. In all likelihood, the attitude of the publishers of the larger newspapers is much more pro-business and anti-labor than the outlook of many of the proprietors of small printing establishments, because the newspaper publishers seldom have a background of first-hand experience in the labor movement, and in general are motivated by the opinions and principles of top management.

Unions have especially favored the closed shop in the printing industry for a number of reasons, but one of the most important has been the fact that printers were traditionally transient workers. The constantly changing labor
forces of the early printing shops precluded any possibilities for concerted and cooperative action among employees to improve their working conditions and wages, unless they had some kind of basic closed shop agreements with employers. Only in this way could the early printers be assured of receiving fair and equal treatment from employers in distant places or in unfamiliar establishments. Without the closed shop, workers were constantly in fear that the employer would replace people who had left his service with those who were hostile to the union cause or ignorant of local conditions.

As much as closed-shop agreements had been traditional practices in the printing industry for more than 100 years, the ITU, in its August 21, 1947, (annual) convention, adopted a policy of protest against the closed shop ban and other provisions of the Taft-Hartley Act, characterizing that piece of legislation as "ill considered," and in other respects "unconstitutional and invalid--impractical and unworkable--inequitable and unjust." The union stated that it had no intention of relinquishing "historic rights and privileges," which it had "enjoyed for nearly a century." 13

The "historic rights and privileges" included the closed shop, which was one of the basic laws of the union. The

position of the ITU on the closed shop was summarized by its President, Woodruff Randolph, before the Senate Committee on Labor and Public Welfare in 1949:

...The closed shop has been something that has been with us from our very birth, over 100 years ago. It came about through the simple fact that union men would not work in a shop unless all were union, including the foreman, of course. Foremen did not think about hiring anything but a union man, and the closed shop was automatic, unquestionable, and never even considered.

It was so when we started to make collective agreements and became a part of the union rules and the union rules have always, from the time of the beginning of labor agreements, been accepted as the floor upon which other matters were collectively bargained.

Now the theory of the closed shop as it was originally conceived and the practical working out of the closed shop provisions of collective agreements, of course, remains the same but there had been something added to it. The added thought about it is that the employer himself benefits from the closed shop agreement.

That service in an industry where the time element is very important has been of considerable value to the employer, and he has been able to maintain what might be regarded as a minimum force, using extra help as needed instead of having to maintain a maximum force to take care of the amount of business that could come in on his largest days.

The closed shop, so far as the union benefit is concerned, rests in having a pool of jobs where our members may be employed; our members being a mobile force, they may then work in one or another of the shops, maybe two or three shops in a week, taking up the extra work that may appear in those shops and working steadily while doing so.

It couldn't be done that way if we didn't have the closed shop agreement. These are economic benefits from the closed shop that are true to both parties, both the employer and the employee.

Aside from that, the union considers it as necessary for its continued existence. If an employer is permitted to dilute the force with non-union people, with people who do not believe in unionism, he can in a period of time replace a
union force with so many non-believers that the union has no stability, because it has no opportunity to strike and win a strike. The non-union people can be of such a number as to make a strike ineffective, so that after a period of time under the provisions of the Taft-Hartley Law, if it remained in effect for any particular period of time and union men remained at work in a shop where non-union people were employed, they would lose their bargaining power. 14

During the long struggle over the closed shop in the ITU case, familiar arguments were raised to "prove" the "inequities" and "monopolies" fostered by the closed shop practices of the ITU. Among other things, the ITU was accused of maintaining a closed union and a closed shop. Refuting this argument, James O. Monroe, publisher of the Collinsville Herald, Collinsville, Illinois, presented some important facts. In the Chicago area, a focal point of the ITU case, out of 2,000 established printing shops only 750 had the union label or contractual relations with one or more unions. This left over 1250 shops which were non-union.

Although most of the unorganized shops were small establishments, it was noteworthy that the R.R. Donnelly Company, the largest commercial printing plant in the world, which is located in the Chicago area, was non-union. Monroe stated that, in his opinion, the so-called "right to work" existed for all printers in the Chicago locality, and that any accusations that the ITU limited employment possibilities for

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any individual in that area were not based on the true facts of the situation. In supporting the right of the union and the employer to make a closed shop agreement, he believed the "right to work" philosophy to be fallacious, because:

...Employment is essentially a matter of agreement.
Any man has the right to hire union men or non-union men as he prefers. And men have a right to seek employment as union men or non-union men. And any employer and any group of workers have, or should have, the right to fix by agreement the conditions of the employment. Any departure from that proposition, it seems to me, leads to endless confusion.

The struggle between the ITU and the closed-shop ban began on November 24, 1947. On that date, Chicago Local No. 16 (ITU) called a strike against the Chicago Newspaper Publishers Association. The publishers were members of the American Newspaper Publishers Association (hereafter referred to as the ANPA), one of the most influential employers associations in the United States. This strike received the support of the International (ITU), and was followed by strikes in various other parts of the nation. The ITU supported the strikes in the legal "fiction" that it was striking for wages--due to the Taft-Hartley provision which made it an unfair labor practice for a union to strike in order to enforce closed shop agreements.


In response to the support which the ITU gave to its Chicago local, and in connection with other strikes, an attack was launched against the international and its locals by the ANPA in conjunction with its associates and affiliates. Charges were filed against the ITU and its officers by the ANPA on November 17, 1949; by the Union Employers Section of the Printing Industry of America against the ITU and various locals on December 5, 1947; and by the Chicago Newspaper Publishers Association (ANPA) against the Chicago Typographical Union (ITU) on January 12, 1948.17

During the time that the hearings on the complaints on the ANPA and Chicago cases were still in progress, the Regional Director for the Ninth Region of the NLRB filed a petition for injunction against the ITU from continuing "unfair practices" pending a final decision and order on the cases in question before the Board. On February 25, after a showing of a "probable violation" of the Act, the Court issued an order restraining the union from violating Section 8 (b) (1) (A) and Section 8 (b) (2) of the Taft-Hartley Act. 18

17 ANPA v. NLRB, 193 Fed. (2d) 782.

18 This move was made under the injunction provision of the Taft-Hartley Law, Section 10 (j).

19 These were the sections which prohibited the union from enforcing employer or employee activity in closed shop agreements. Evans v. L.T.U., 76 F. Supp. 881.
The injunction which the Court issued against the ITU had two basic provisions: (1) It enjoined the ITU from "using Form P6A, clauses permitting cancellation of agreements upon sixty days notice, seeking to cause employers to discriminate," and (2) it ordered the International to "refrain from supporting strikes for any such purposes."

On October 17, 1948, because of the competency clause contained in the proposed form for a contract sent out by the union at the end of March, the ITU was held in contempt of the injunction. In the opinion of the ITU, this demonstrated that:

Collective bargaining in our industry has been carried on, not with our employers, but with General Counsel Denham and the Federal courts.

We demonstrated that this interference with the processes of collective bargaining has gone so far that we were held in contempt of court for, among other things, failing to include a provision for a neutral 'tie-breaker' in a proposed contract clause setting up a joint employer-union committee for the training of apprentices.

We believe that this is the first time in American history where either a union or an employee was held guilty of violating the law for failing to place some language in a proposal made in the course of collective bargaining, which the employers were free to reject and frequently did... 20

The results of the cases against the ITU were as follows:

1. The Board found that the ITU had violated Section 8 (b) (2) of the Act, which prohibits a labor organization or its agents from attempting to coerce or coerced an employer to discriminate against an employee (in violation of Section 8 (a) (3)).

2. The Board found that the ITU and its officers were guilty of violating Section 8 (b) (1) (B) by forcing the employers to hire only union foremen in the composing rooms. This section of the act says that it is an unfair labor practice to coerce or force 'an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances.'

3. The Board found that the locals had refused to bargain in good faith—and that all of the respondents had insisted on closed shop provisions. 21

These decisions were reaffirmed in a combined case before the United States Court of Appeals, Seventh Circuit, on December 27, 1951. This consolidated the cases filed against the ITU by the American Newspaper Publishers Association, the Chicago Newspaper Publishers Association, and the Printers Industry of America. 22 As a result of these decisions, the Board ordered the ITU and its officers to cease and desist from all activity designed to force closed shop agreements, and that notices of compliance to that effect would be posted by the union. The effect of the Board's decision and orders upon the ITU were not what was expected. The union considered the closed shop so important

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21 NLRA v. ITU 86 NLRB 951; NLRB v. ITU 86 NLRB 1041; NLRB v. ITU 87 NLRB 1418.

22 AMFA v. NLRB, 193 Fed. (2d) 782.
that it spent over $25,000,000 by 1951 to support its union security aims. This was substantiated in the testimony of President Woodruff Randolph of the ITU, when he appeared before the Senate Committee on Labor and Public Welfare in 1953.

However, the ITU learned a costly lesson in its fight with the ANPA, namely, that it must keep all closed shop issues underground in order to avoid court action. Due to that reason, there is little real evidence to prove that the ITU has retained closed shop agreements, or that the union has maintained a behind-the-scenes closed shop drive. One indication of the importance which the ITU still attaches to the closed shop is the fact that over 95 per cent of its contracts which were in effect or in negotiation in 1953 provided for immediate restoration of the pre-Taft-Hartley union security provision (i.e., the closed shop) if and when the present law is amended, revised, or removed from the books.23 Regardless of such a provision, the ITU denied that it has tried "to establish contract conditions in violation of the law of 1947" and stated that it "has no closed shop agreements or contracts...and has not gone on insisting

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on closed shop agreements.** However, a representative of the American Newspaper Publishers Association, Elisha Hanson, charged that since August 22, 1947, the ITU had started sixty-eight strikes against 106 papers in seventy-two cities, and that all of these strikes were allegedly in support of an illegal closed shop policy. Nevertheless, the ITU stated that it had "repeatedly told local unions that they cannot make illegal contracts" and cited the case of the ITU local in Mansfield, Ohio, which had its charter revoked because it insisted on closed-shop contract provisions with local publishers.

Through the closed shop ban of the Taft-Hartley Law, the ITU has been forced to abandon its position that it had a legal and traditional right to closed shop agreements, a position which it had maintained for over a hundred years. From the standpoint of the union, it was an irony that the ANPA, an organization which had closed shop agreements with the ITU as early as 1901, was one of the leaders in the anti-closed shop drive. Due to their illegal nature, it is difficult to ascertain the real number of closed shop agreements

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24 Ibid., p. 651.


26 Ibid., p. 2735.
which are in force. Without much doubt unwritten closed shop practices, mutually agreed upon, are probably in force. The ITU denies, the ANPA accuses, and employers who might be parties to closed shop agreements remain silent, but it is safe to assume that because of the ITU attitude and the sympathies of some employers a great number of unwritten closed shop practices still exist in the printing industry.

Through its strikes, the ITU convinced those employers who might be hostile that the union is able to effectively support its locals, but there is little doubt that the expenditure of over $25,000,000 by the union from 1947 to 1953 has greatly weakened its ability to fight on a wide front for some time. Everything considered, the net result of the strike was to pinpoint the lack of wisdom in legislation which does not take into consideration the particular and peculiar characteristics of the industries which it regulates.

The real effect of the Taft-Hartley closed shop ban on the ITU was to invalidate thousands of agreements which had been made in good faith and with the consent of the parties concerned. The closed shop was part of the "General Laws" of the ITU, and as such was outside of matters for negotiation, but the Taft-Hartley Law changed all of this. In its attempt to salvage its maximum union security agreements, the union found itself opposed by an organization (the ANPA) which had signed closed shop agreements with the ITU as early as 1901.
Although it suffered no great loss in membership, the ITU spent a small fortune ($25,000,000) in its attempt to retain the closed shop. From the standpoint of the union, it was forced to make a "show of strength" in response to the hostile tone of the Taft-Hartley Law. Even though the union was compelled to retreat from its position, there is little doubt that its success in maintaining its members with generous strike benefits and its proven ability to continue functioning as an effective organization during several years of economic strain made a long and lasting impression on those employers who seriously contemplated driving out the ITU.
Chapter III

THE CLOSED SHOP BAN IN THE MARITIME INDUSTRY

Besides the printing industry, discussed in the previous chapter, two other major fields were deeply affected by the Taft-Hartley ban of the closed shop. These were the maritime and construction industries. In both of these industries, the accepted hiring practices were based on a variation of the closed shop, the "hiring hall." In both industries, the unions which had closed shop agreements maintained understandings with employers to furnish union workers through union sources and to restrict the number of nonunion men who could be employed on union jobs. In general, these hiring hall agreements were supported by employers as well as by the unions, and regardless of the early opposition of the employers groups to closed shop, employers had found certain aspects of union security agreements which worked to their advantage.

In the maritime industry, it is necessary to understand something of the background of labor relations to appreciate the situation which existed prior to the passage of the Taft-Hartley Act. Under the provisions of maritime law, the relationship set forth as mandatory between the ship's master and the seaman has retained
an almost feudal quality. In the earlier days, the master had the right to flog, chain, hang, or even starve a sailor in order to maintain discipline, to enforce safety, or punish crimes. The master was judge and jury -- besides serving as employer and "landlord."

As a result of long and often heartbreaking struggles, the early labor unions were able to eliminate some of the abuses and discomforts which the seaman was forced to undergo because of tradition and law.\(^1\)

The right of the seaman to the same rights and privileges that are the heritage of other Americans was not firmly established until the passage of the United States Seaman's Act of 1915. This bill recognized the right of the seaman to collective bargaining (without being hanged for "mutiny") and prompt and orderly settlement of all disputes concerned with rates of pay. It also regulated such important items as the hours of employment; types of work; washing and sanitary facilities; and defined which punishments the captains could resort to in case of infractions of rules or laws. This law combined and embodied with all previous and subsequent acts and laws into the United States Merchant Marine Act of 1936. Any disputed

rights which a sailor is entitled to receive under the provisions of the United States Merchant Marine Act are referred to the Federal Maritime Board, which is the common negotiator and arbitrator between the ship owners and the unions. From this it may be easily understood that the merchant seaman has occupied a unique position before the law. In return for the voluntary self-limitations which the sailor accepts in order to comply with law and tradition, plus the inherent nature of his occupation, the sailor has been considered in the past to constitute an exception to many of the labor laws which were written for more conventional workers.

The Taft-Hartley Law, with its blanket indictment of the closed shop, made no provision whatsoever for the peculiarities of maritime employment or for the organization and methods of maritime unions. The hard core of the closed shop in the maritime unions is the union "hiring hall." Because the average seaman often


3 The sailor is away from his home and family for extended periods of time, is subject to dangers which would not exist on land, and has greatly limited facilities for recreation and entertainment.
changes ships at the end of a voyage, there is an ever present necessity for renewing the terms of employment. Prior to the passage of the Taft-Hartley Law the unions performed this service for their members on a basis of seniority in the union and the amount of time an individual had spent on shore since his last voyage. Either by written or tacit approval, the ship allowed the unions to hire their personnel — and due to a rapid labor turnover, relieved themselves of considerable expense and effort. This hiring hall was the objective of almost all of the early maritime strikes. One reason that the union desired to control the hiring of merchant seamen was that only in this way could it eliminate the notorious employment practices which had for too long been typical of the industry. It eliminated the practices of "securing" seamen against their will from saloons and boarding houses, or forcing them to pay for their jobs with money or by catering to the ship's masters. It ended the "shape up" and the practice

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4 The "shape up" consisted of hiring seamen from crowds of applicants on docks or other suitable places. Usually there was no accurate selection of individuals on a basis of seniority, skill, or past employment records. Often this arrangement depended almost completely on which man would work for the least amount of money, and in many cases resulted in sailors having to bribe hiring officials in order to obtain employment.
of shipping workaways. In the past the seamen had to search for jobs at the company offices, the docks, and a thousand and one other places, but the hiring hall established an equitable and just central hiring place.

The threat of the Taft-Hartley Law to the maritime unions was double. By eliminating the hiring hall, it would have reduced the bargaining power of the seamen, as they would have been forced to offer their services in any manner that the employer elected. Secondly, the seamen would have been deprived of the resources and services of their unions, as at the initial contact with their employers they would have lost the aid of their organizations. While shore workers are free to quit a job at any time they desire, seamen are subject to being locked up or charged with mutiny if they attempt to terminate their employment at will. For this reason they are much more dependent upon adequate industrial representation than the land worker.

5 The workaway was a seaman who worked for no wages, receiving payment for his labor in food and lodging. The evils of such a system are obvious. The seaman was a virtual chattel servant of his employers; and the seaman who was working for wages was under the constant policies or practices of the company or its representatives. The workaway was most common in times of economic crisis, when jobs were hard to find on land and often nearly unobtainable at sea.
The potentialities of an application of the Taft-Hartley Act were obvious -- the union could not promise its members employment, it could not retain its membership, and it could not bargain effectively. To the National Maritime Union, an aggressive organization which had shown tremendous growth during the war years, the new law seemed a death warrant. The charges of discriminatory practices were made by the Texas Company, the Cleveland Tankers, Incorporated, the Lake Tankers Corporation, and the Great Lakes Transport Company.\footnote{National Maritime Union v. the Texas Company, 73 NLRB No. 137, 1943.} The National Labor Relations Board ruled that:

1. The NMU hiring halls were a violation of the closed shop provisions of the law. The provisions of the union’s contract which stipulated that the employer would hire only those persons furnished by the union hiring hall amounted to discrimination.

2. The portion of the contract which required the employer to hire persons for specific tasks was a violation which contemplated specific discrimination.

3. The insistence of the union upon employer discrimination against non-union employees, and the authorization by the union of a strike to enforce such a condition was unlawful.
The Board did not decide that the hiring hall, in itself, was discriminatory:

"...The hiring hall in question does not on its face require that the Companies discriminate in favor of NMU members. Unlike the so-called "closed shop" contract by virtue of which employers are required to hire only such persons who are members of the contractive union, this provision requires only that the employer hire such people as are supplied by the Union, unless the Union is unable to provide the needed replacements. It is thus contended by the Respondents (union and its officials) that there is nothing on the face of the agreement which contemplates a discrimination in violation of Section 8 (a) (3). We do not pass upon whether the hiring hall provision would be unlawful absent evidence that in supplying the Companies with personnel, NMU establishes, and we find, that in the operation of the hiring hall in question such discrimination against non-members did exist, and that the Respondents and the Companies contemplated that such discrimination would continue if the hiring hall provision was included in the 1943 agreement." 7

Response to the ruling of the Board was in general agreement that although the spirit of the law was being kept there were glaring inconsistencies between the law and the realities of labor relations. To assume that the senators and representatives who voted for the Taft-Harley Act were cognizant of the true position of the closed shop or of the hiring hall in the maritime industry would be stretching a point, but after the ruling of the Board in the NMU case, even conservative

7 Ibid., p. 6540
editorial opinion took a second look at the new Bill of Rights. In an editorial on August 20, 1948, the New York Herald Tribune stated:

... The Board has rejected the contention that the peculiar characteristics of the maritime industry require union control of employment. Their duty, as the decision points out, is to administer the law as written and not to pass on the wisdom of its provisions. However, anyone familiar with the shocking conditions under which seamen were employed -- including being drugged and shanghaied aboard ship -- in the days before unions were strong will agree that union hiring halls have brought urgently needed reforms, as well as some abuses.

The decision against the National Maritime Union in the Great Lakes case poses squarely the need for revision of some of the terms of the Taft-Hartley Act. We have suggested before that a blanket provision against the closed shop, for example, may not be the best way to cure abuses that exist in some closed-shop situations; experience indicates that there are other parts of the Act which need reconsideration. Some provisions need tightening, such as that against featherbedding, others need to be relaxed or at least clarified.

Impartial observers agreed with the employers that the old hiring terms were illegal under the terms of the Act -- but they also agreed that in order for the seamen to accept the Taft-Hartley "union shop" they would have had to be willing to eliminate the union security measures which were procured at the cost of a long and arduous struggle.

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In actuality, the hiring shop continued to operate. One reason was that employers depended upon it to such a degree that they would have been crippled in their operations if the union had not continued to act as an employment agent; and another reason was that the union simply did not intend to give up the hiring at all for any reason.

The fact that the closed shop continued to be an established institution in the maritime industry was borne out by the report of the Subcommittee on Labor and Labor-Management Relation, headed by Senator Humphrey of Minnesota, which met in 1951. In the majority report of the Committee, it was stated that:

"...The candid facts are ... that unions and employers have not stood by idly and permitted the law to destroy their effective operation. There has either been the bootleg closed shop in which the employer turns to the union hiring hall in self defense because there is no other reliable source of manpower; or the subterfuge for the closed shop; namely, some such provision that priority in hiring is put on a seniority basis which is presumably legal under Taft-Hartley. It also happens that union members usually have the longest seniority so the effect is to provide legal authority to union members."

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This viewpoint was backed by the statements of two maritime union officials. Harry Lundeberg, president of the Sailors' International Union of the Pacific, said:

I told the shipowners this, I said, "All right, if we can change the wording, all right. If we can't, take it out. We are still going to get anybody else but men from the union hall anyway. Where are you going to get the men to man the ships?"11

And in the opinion of the Secretary of the Radio Officers Union:

...Lest someone say at this point that after more than 5 1/2 years under the Taft-Hartley law, the maritime unions are still here and stronger than ever, so "How come?" You may say, "If what you say is true, why haven't these unions been destroyed?" My answer is that we still have the union hiring hall for members only, and we have the closed shop, despite the prohibition of the Taft-Hartley law. The companies are apparently satisfied to continue their hiring through the union hiring hall. Every company with which we have signed agreements, and with several with which we have no signed agreements ... have continued to hire ... through ... the hiring hall. Our union hiring hall is more closed today after 5 1/2 years under the Taft-Hartley law.

Law than it ever was before the law was enacted. As far as I can determine, this is true insofar as other maritime unions are concerned.12

The hearings before the Senate Subcommittee on Labor and Labor-Management Relations in 1950 included representative factions of almost all of the varying shades of opinion within the maritime industry. Officers of eleven labor organizations testified in favor of the hiring halls, five being CIO, four AFL, and two independent. Of the six management groups represented, five were in opposition to the hiring hall, although all of them admitted that they had been or were parties of such an agreement.

The eleven labor organizations which were represented and the individuals who spoke for them were:


12 U. S. Congress, Senate, Committee on Labor and Public Welfare, Hearings before the Committee on Labor and Public Welfare, U. S. Senate, 83rd Congress, 1st Session, Part 5, Appendix, pp. 2875-2876. (Statement of the Radio Officers Union, New York, New York, Fred M. Howe, Secretary-Treasurer.)


The management organizations opposing the closed shop were:

1. Inland Steel Company, Chicago, Ill., pp. 239-255.


3. Cleveland Tankers Inc., Cleveland, Ohio, pp. 211-229.

At the time that the maritime hearings were held, a number of cases were pending against both employers and unions related to unfair employer and labor practices concerning the hiring hall. The surprising fact is that more employers were being charged with unfair employer practices than unions were being charged with unfair labor practices, although more cases were involved against unions.  

The National Labor Relations Board liberalized its position on the hiring hall in a ruling on July 20, 1950. This was done after Congress failed to amend the closed shop provisions of the Taft-Hartley Law in order to permit the closed shop or the union hiring hall in the maritime industry. The National Union of Marine Cooks and Stewards had proposed to a group of employers that they should hire exclusively through the

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14Ibid., Appendix 20, pp. 562 and Appendix 21, pp. 563. (17 cases were pending against 15 employers and 25 cases were pending against 7 unions)
The union did not take the position that it would consider union membership as a requirement for hiring through the hiring hall, and in this case the Board decided that the proposed action of the union would not constitute a violation of the Taft-Hartley Law. The decision of the Board was made in spite of the fact that the union demanded that preference be given to those workers who were currently employed by the companies, and those who had seniority with the employers during the two years immediately preceding the date of the contract. The union claimed that continued union membership would not be required for a worker to take advantage of the seniority provisions. In this case, the NLRB quite obviously took steps to accomplish something that Congress failed to do — ease the restrictions on the hiring hall and the closed shop in the maritime industry.15

The only conclusion which logically can be drawn concerning the hiring hall in the maritime industry is that it has continued in effect to the present time. In some cases as an "open" union hiring hall, the closed shop has remained in effect in all cases in which

15 National Union of Marine Cooks and Stewards, 90 NLRB, No. 167 (1950).
the companies and unions have co-operated to retain it. No proof has been advanced from any quarter to show that the hiring hall practices have been eliminated, and assurances have been made that at the present time it is the only workable system for employment and union security in the maritime industry. Perhaps one of the greatest obstacles in the way of the full implementation of the law has been that no party has outlined any proposal which would be an effective replacement or substitute hiring arrangement. In reality, the unions and management have both rejected the abolition of the union hiring hall because of the chaos and confusion which would result from a return to the inefficient methods of the past. The NLRB and the courts seem to have maintained a "hands off" policy except in those cases in which definite charges have been made.  

This can be substantiated by the fact that over seventy unions operate in the maritime industry, and only a few have been formally charged with closed shop practices.

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16 This is in contrast to the policy of General Counsel Denham of the NLRB who made public statements to the effect that he would discover and prosecute all violations of the act.
Due to methods of operations which are similar to those of the maritime industry, and because of factors which are peculiar to it alone, the construction industry has been one of the strongholds of the closed shop and the union hiring hall. Like the maritime industry, construction is a field of intermittent employment, but in itself the construction industry is characterized by the fact that it is primarily divided into different fields of skills rather than among different employers.

Although a few construction jobs may last for many months or even for several years, the great majority of these jobs are of a relatively short duration. At the termination of each job the construction worker must seek new employment. Furthermore, the construction worker may be employed by literally dozens of employers in a single year, and may work in a great number of localities during the same period of time.

Another factor which complicates employment in the construction industry is the great amount of specialization and the sharp divisions of labor necessary for rapid and efficient building. Construction work is
divided into cycles, as on a particular job highly skil-
led artisans can most efficiently complete the work
with the minimum cost to the contractor and the builder
in this manner. There is almost no time when all of
the men who will work on a single job can possibly be
employed at the same time. This is because most con-
struction operations are dependent on others being
completed before they may be started. Brickmasons,
plumbers, carpenters, cement workers, sheet metal workers,
steel workers, glaziers, electricians, painters;
plasterers, tile setters, heating and air conditioning
men, etc., all perform functions which are as indepen-
dent of each other as they are interdependent. All of
these workers appear on a job at different stages of
completion and no contractor would plan his work in any
other way.

What has been the effect of the characteristics of
the industry upon the goals and policies of the con-
struction unions? As could be assumed, the unions have
tried to protect their members as far as possible from
the hardships of intermittent employment. They have
done this by organizing primarily upon lines of certain
skills, and then by so allotting the work of their members
as to provide the maximum of employment for all. The
only practical method to accomplish these goals has been the closed shop, by eliminating the threat of wage cutting and cut-throat job competition, and by establishing definite standards for levels of skill among workers of a certain craft. The union hiring hall has given the unions the ability to contract for the services of their members, to direct them to localities where opportunities for employment have been best, and to operate rotating hiring systems based upon seniority and the length of time individuals have been unemployed, in order to guarantee them a fair share of the jobs available.

How have contractors reacted to the peculiarities of the industry? Many contractors bid on jobs which are in distant localities or which are many months in the future. These contractors have no method of estimating the number of skilled workers who will be available in a community at a given time, unless they have a definite agreement with a dependable source of labor before the job begins. Because of the extensive nature of contracting operations, regional sources of labor are often inadequate for some crafts, and without the help of the union hiring halls employers would find themselves unable to fulfill their commitments. The hiring halls have solved this problem because of their
national affiliations and their ability to refer workers to a particular job from all parts of the country.

Even on a local basis, it would be impossible for an employer to halt operations at each stage of a project until he hired sufficient numbers of skilled workers to allow him to continue work. Sources of labor which are sufficient for other industries are completely inadequate for contractors. Public employment agencies and private agencies operate on a "first-come first-served" basis, and are seldom too dependable, due to the limited number of men available for all jobs in a certain community.

Of great influence on the growth of the closed shop in the construction industry has been the policy of the AFL. Although there are a number of independent construction unions, the AFL is one of the oldest and most influential groups of construction unions, and since 1890 it has given open support to closed shop agreements. Part of the success of the AFL unions in expanding closed shop practices has been due to the basic improvements which these unions have made in the lives of construction workers. Since 1890, the unions have materially reduced working hours for their members,
at almost double the rate of increase for industry as a whole. 1 It would be difficult to estimate whether these improvements have been the direct result of closed shop and hiring hall practices, or because of the size, age, and prestige of the unions concerned, but it would be safe to assume that the AFL construction unions have been materially aided in their growth by the closed shop.

Under national labor legislation, the construction industry was recognized as having characteristics which separated it from the majority of industry. The Wagner Act was not applied to construction, although related and supporting industries, such as brick, steel and cement manufacturers, did come under the Act. The Taft-Hartley Law made no exceptions when it prohibited the closed shop. The unions opposed any attempt to eliminate the traditional closed shop agreement, and were supported by many contractors. The National Labor Relations Board followed a vigorous policy in attempting to enforce the closed shop ban in the construction industry.

The following cases are examples of those which came before the N.L.R.B. in connection with closed-shop practices.

Regardless of the pro-closed shop stand of some contractors, there were a few individuals who tested the applicability of the Taft-Hartley closed-shop ban to the construction unions. The Denver Building and Construction Trades Council picketed Henry Shore, a highway contractor, in order to force the discharge of certain nonunion employees whom he had hired. Shore charged the union with unfair labor practices. The court decided that Shore, who was engaged in highway construction for the United States government and other parties, was within his rights in hiring nonunion people. The decision of the court was that the action of the union in picketing the employer for the purpose of forcing the discharge of nonunion members constituted an attempt to accomplish an illegal aim — a closed shop agreement. This decision left no doubt as to the power of the Board in cases involving construction unions. ²

In the case of Guy F. Atkinson Company and J. A. Jones Construction Company, the Board made clear its position in the case of a union which did not have a majority of employees at the time a contract was signed. The companies were working on a huge atomic project for the United States government, and hired the worker on November 4, 1947. This party was a worker, Chester A. Hewes. He was discharged at the request of the contracting union, Local 370, International Union of Operating Engineers, AFL, because he was not a member of the union. The Board rejected the argument of the companies that the NLRB had no jurisdiction in cases of this kind, and after stating that it would effectuate the policy of the Taft-Hartley Law in its jurisdiction, declared that the contract between the union and the contractors was not a valid defense because it was signed at a time when the union did not represent a majority of the employees in the bargaining unit. Furthermore, the Board decided that the discharge of Hewes was a violation of Section 8 (a) (3) of the Taft-Hartley Law, and ordered the reinstatement of the worker with full back pay.3

3 Guy F. Atkinson Company and J. A. Jones Construction Company v NLRB, 90 N.RB 143.
In the hearings conducted by the Senate in 1951 to consider the amendment of the Taft-Hartley Law in respect to the building and construction industry, the legal representative of the Guy F. Atkinson Company and the Associated General Contractors of California, Gardiner Johnson, stated that, in his opinion, the contract should have been allowed to stand because it was executed in the "twilight zone" between the enactment and enforcement dates of the Taft-Hartley Law. In addition, he explained the necessity for utilizing the unions as a source of skilled, reliable and available labor in the construction industry.4

The agreements which had been mutually satisfactory continued to operate under the new law. By the date of the 1951 Senate hearings to consider amendment of the law in regard to the construction industry, thirty-three cases had been decided by the NLRB. These cases involved violations of Sections 8 (A) (3) and 8 (B) (3) of the Taft-Hartley Act. It can be seen

from this great number of cases that violations of the law were common, and that passage of the Taft-Hartley closed-shop ban did not eliminate closed-shop practices in the construction industry. In all thirty-three cases decided by the NLRB, only one was initiated due to charges by a contractor, that of *Shore v. Denver Building and Construction Trades Council*. Twenty-three of the cases were as a result of charges by individuals, eight were made by rival unions, and one at the request of the union which was a contractual party.5

From the number of cases which were involved, and from the fact that only one case resulted from charges made by an employer, it may be assumed that contractors in general have co-operated with and assisted construction unions in administering and implementing verbal closed-shop agreements. The only real result of the application of the closed shop ban in the construction industry has been to give individuals the right to harrass unions and employers, and to allow rival unions a means of invalidating contracts which excluded them.

Another Case involved an individual who charged an employer with practicing illegal discriminatory activities. William E. Kimmins, a contractor engaged in the installation of sewers, water and gas mains, and building telephone conduits for municipalities, was charged with discrimination in laying off and refusing to rehire one Robert Brown because of an illegal "closed shop" agreement. The Board found that the employer did have a discriminatory agreement with the union, and that no union shop (Section 9 (e)) election had been held; the discharge of the employee was found to be a violation of the closed shop provisions of the law (Section 8 (a) (1) and (3)). The contractor was also notified that his agreement with the union was invalid until a union shop election was held. 6

An example of a rival union accusing a union and an employer of jointly violating the closed-shop provision of the Taft-Hartley was the case of Arthur G. McKee and Co., with the Carpenters, AFL, involved. The party making the charges was the International Association of Machinists. The events in this case occurred during 6

6 William E. Kimmins v. NLRB, 92 NLRB No. 25.
the construction of a $20,000,000 plant in Texas. The Machinists charged that the contractor refused to hire three men because they were not members of or referred by the Carpenters Union. They charged that McKee and the Carpenters Union had a closed shop agreement. The Board did find that McKee had made an agreement to hire only those men who were referred by the union, and was in violation of the law (Section 8 (a) (1) and (3)). In this case the Board ruled that the violation of the law commenced when work was applied for, and not when the jobs became available.7

These cases illustrate the attitude of employers toward the role of the unions as a source of trained labor. In support of a proposed amendment to the Taft-Hartley Law to allow closed shop conditions in the construction industry, representatives of the National Constructors Association, an organization which had over $800,000,000 of construction in process in 1951 alone, completely endorsed the unions as a highly satisfactory and efficient source of employees. In 1953, this association was handling over $2 billion worth of construction, and reiterated its stand on the

7 Arthur J. McKee and Company v. NLRB, 94 NLRB, no. 69.
closed shop issue. The president of the Association, J. J. O'Donnell, gave his reasons for the justification of the closed shop in the construction trades:

...The typical construction worker is not only truly the employee of a specific employer; he is, rather, the employee of the industry, gaining employment from whatever contractor happens to be engaged in work in the area of his home. If construction activity is low in his home locality, he travels to nearby areas for work, and often to other States and regions. Historically, and largely because he cannot depend upon a specific employer for his livelihood, the average or typical construction worker looks to his union for the security which other workers find in factory, shop, mine, or office...

and as for the contractor, Mr. O'Donnell believed that:

...when we move into an area, we must have some method of quick recruitment -- for relatively short employment periods of experienced and skilled mechanics ... the building trades have supplied us with skilled workers for over 50 years...

...By negotiation with local employers, the local unions can establish uniform wage rates and working conditions which normally remain in effect for specific periods of time. Local unions can foresee employment needs, they can arrange, through transfer of men from project to project and through advertising their needs to neighboring localities and affiliated locals, to supply qualified men when and where they are needed...

In line with Mr. O'Donnell's reasoning, it is easy to understand the problem which would face contractors making bids in metropolitan centers on industrial and commercial jobs in far away localities if they could not be assured of a stable working force of unqualified men at a definite rate of pay for required lengths of time.

Contractors were not alone in testifying as to why the characteristics of the construction industry made the Taft-Hartley closed shop and union shop provisions highly unrealistic. In 1953, Senator Hubert Humphrey of Minnesota, chairman of the Subcommittee on Labor-Management Relations from 1951 through 1952, presented the opinions of the Subcommittee to a Senate hearing on the construction industry. The Subcommittee stated that the results of their hearings showed that the construction industry was characterized by:

1. Casual and Intermittent Employment, --
   A particular construction job is characterized by the use of cycles of skilled workers, plumbers, iron workers, carpenters, sheet metal workers, each coming in at different times, but rarely staying on a particular job for any substantial length of time. The workers are attached to a labor pool for a standard skill in contrast to an automobile or steelworker who is attached to an employer.

2. Dependence on the union hiring hall -- Construction contractors cannot function efficiently unless they can estimate labor costs. They can't estimate labor costs unless they can have some commitment from the union
on rates. And this cannot be done without a union agreement in advance of undertaking the project, which is now contrary according to law as interpreted by the NLRB.

3. The Taft-Hartley Law and its administration does not permit the efficient functioning of this industry -- it has been virtually impossible for the National Labor Relations Board to conduct ... representation elections ... because, as we have seen, the work force is a constantly changing one ... In the end, what happens is that the established unions win the elections anyway. The upshot is an enormous administrative task to establish what was obvious in the first place; that the majority of the workers want the established unions to represent them. Spokesmen from organized employers and workers told the subcommittee that this situation imposed great hardship on all elements in the industry.9

The assumption that the closed shop and the union hiring hall have continued in the construction industry is implied in the number and types of cases which appeared before the NLRB, in the statements of employers who favored it as recently as 1951, and in the admission of opponents of the closed shop. William J. Tobin, appearing before the Subcommittee on Labor and Labor-Management Relations in 1951, stated that:

... The passage of the Taft-Hartley Law in May of 1947 did not alter the closed shop building operations in such cities as Chicago, Cleveland, and the metropolitan New York area, the West

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Coast area, to an extent even worthy of mention. Construction of all types in these and other areas has been closed shop for years and will undoubtedly remain so.

We know of few instances in which builders in such communities made any concerned effort to utilize the Taft-Hartley law as a medium of returning to an open shop operation or otherwise weakening local union control...10

This statement was made over four years after the passage of the Act, and covered a period of time in which it would have been possible for thousands of contractors to have questioned the closed shop agreements which were in existence. It was made by a man who was the head of the Labor Department of the National Association of Home Builders, an organization which has fought the closed shop in any shape or form.

Although statements indicating the persistence of closed shop agreements are available from employers' statements, decisions of the National Labor Relations Board, and congressional testimony, there are no statements by responsible leaders of the construction unions to the effect that the closed shop is still in existence.

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Why have the unions refused to admit that they are continuing closed-shop practices? For several reasons it would be tactical blunder for the construction unions to make such an admission. First of all, the construction unions are well established organizations, enjoying the respect of both employers and the general public, with a tradition of conservative action and law-abiding activities. Secondly, the closed shop agreements in force are very difficult to prove, due to the short length of most construction jobs. Third, the agreements have the support of the majority of contractors, who would rather maintain their closed shop arrangements and risk discrimination suits than pay the costs of the needless interruptions and expensive delays which would result from an open shop, or the Taft-Hartley union shop. For these reasons it has been possible for the construction unions to continue closed shop agreements, and in the process they have avoided the costs of expensive legal defenses, maintained their traditional agreements, and have avoided publicity which would picture them as organizations which are willfully non-complying with the Taft-Hartley Law.
Chapter V

SUMMARY AND CONCLUSIONS

As shown in Chapter I, the closed shop has been an acceptable form of union security agreement in many industries since the latter part of the 1800's. In a number of industries it has not merely been acceptable, but has been necessary for the efficient functioning of business operations. Basically, the closed shop was instituted, organized and perpetuated because of the well-founded fear of union members that their organizations would be attacked and destroyed by hostile portions of management, who completely opposed the purposes of the labor movement. This fear has been bolstered and enlarged by every attack upon labor which has taken place since the formation of the first unions. Every public and private utterence of enmity on the part of management has served to intensify this feeling of insecurity! The closed shop has provided security where none existed, or where prevailing agreements were insufficient for purposes of defending labor from its opponents.

The passage of the Taft-Hartley Law in 1947 and its prohibition of the closed shop reversed the development of the closed shop as an optional yet completely legal form of union security. Allowable under the
Wagner Act, and recognized by the National Labor Relations Board and the federal courts as being legally and morally justifiable, the closed shop, which covered millions of workers in 1947, was declared illegal and morally reprehensible. That the Taft-Hartley Law constituted a reversal of federal policy towards union security was admitted by both opponents and supporters of the Act. The new law rejected the idea that the union jurisdiction should be as broad as the workers represented, and encourages employers to fight union organization and operations. As shown in Chapter II, this change of policy stirred the resentment of organized labor. The unions were prone to feel that they were being cast adrift by the federal government, and that attacks upon their consolidation or expansion were being invited by prohibiting maximum security agreements and placing heavy restrictions on union shop elections.

The International Typographical Union was the first major labor organization to feel the impact of the closed shop ban upon its union security agreements. As demonstrated in Chapter II, many employers in smaller printing shops were not unfriendly to the cause of labor, but opposition to the closed shop came from the large city newspapers, managed by men who shared the opinions of the more conservative elements of management. With the opportunity given them by the new law, the large
publisher associations tried to break the closed shop agreements of the ITU. The union adopted a policy of supporting "economic" strikes, which were legal under the Taft-Hartley Law, and never abandoned this position during four years of legal struggle. However, this stand was rejected by the decisions of the National Labor Relations Board and the Federal Court of Appeals, which decided that the ITU was guilty of attempting to force employers to hire union workers exclusively, and ordered the union and its locals to desist from such activity. The total cost of the series of strikes by ITU locals was over $25,000,000 of the International's funds. The union demonstrated that it was able to oppose unfriendly employers for a sustained period of time, but was undoubtedly weakened by the heavy outlay of cash. The net result of this struggle has been that the American Newspaper Publishers Association has charged the ITU with still engaging in unwritten closed shop agreements, while the president of the union, Woodruff Randolph, admitted that over ninety-five percent of the contracts in force or being negotiated in 1953 contained provisions for the immediate reinstatement of closed shop agreements upon the amendment, revision, or elimination of the Taft-Hartley closed shop ban. Figures as to the comparative strength of the
union's locals at the present time (1954) as contrasted to the pre-Taft-Hartley level are not available.\footnote{1}

From the facts which are available it must be assumed that the closed shop still remains in practice in many of the smaller and possibly in some of the larger shops which have agreements with the ITU. Since these would be on an unwritten basis, it would be almost impossible to estimate the number in existence.

In chapter II, the reaction of the maritime unions to the closed-shop ban was demonstrated. The maritime workers had felt the results of the "laissez faire" federal policy in the days before governmental regulation of employment agreements in the maritime industry, and realized that the union control of hiring procedures had eliminated many of the abuses which had existed under the maritime "open shop." The very core of the procedures which improved the lot of the sailors was the hiring hall, forbidden by the Taft-Hartley closed-shop ban. The case which established a precedent for treatment of the closed shop and the hiring hall in the maritime industry was that one involving the

\footnote{1}{A request for data regarding the effect of the Taft-Hartley closed-shop ban upon the membership strength of the ITU was made upon the office of the president in Indianapolis, Indiana. Literature was sent to the writer but no data was enclosed giving specific information on any loss or reduction in membership or on present membership.}
National Maritime Union, CIO, one of the "big two" among the maritime unions. Although the union protested that its hiring halls were not discriminatory, and that the closed shop arrangements in the maritime industry had reformed the entire system of maritime employment, the National Labor Relations Board found that the union had been discriminatory in its particular operation of union hiring halls. Statements by several maritime leaders have been to the effect that the maritime unions have continued to survive under the Taft-Hartley Law because they have continued to enforce closed shop agreements. In 1951, the NLRB liberalized its restrictions upon the maritime hiring halls, and ruled that agreements which called for the recognition of seniority of members formerly under security agreements, and which promised to hire qualified non-union men, were not illegal. This decision accomplished what Congress did not, by loosening the strict interpretation of the law which had been applied against the NMU. Statements from employers who were sympathetic to union hiring hall agreements were strongly in favor of amending the Taft-Hartley Law so as to permit legal hiring hall arrangements, there being a strong implication that such agreements are now being enforced by unwritten agreements. The maritime unions have admitted being parties to such
agreements, and have said that the elimination of the legal status of the closed shop under the Taft-Hartley Law in no way destroyed the majority of closed shop and hiring hall agreements.

In the case of the last industry which was considered, the construction industry, an unusual situation is found. In this instance it has been employers who have been charged by the NLRB with perpetuating closed shop agreements. Some of the largest construction firms in the nation gave strong support to a proposed 1951 amendment to the Taft-Hartley Law, which would have legalized the closed shop in construction. The construction unions have been extremely reticent in making any public pronouncement as to their policies or practices under the closed shop ban. Probably this policy has been the result of the desire to stay as far out of the legal and public spotlight as possible, in order to save the union's court costs, adverse publicity, and possible penalties. The employers have supported the closed shop because of the stabilizing effect it has upon labor costs, the provision of skilled and trained workers, the partial guarantee of efficiency which it makes, and many other factors. The absence of national publicity has worked in favor of the construction closed shop. Even the opponents of the closed shop in
the construction industry admit that it is still a
general practice.

The following conclusions may be drawn from the
facts submitted on the previous pages:

1. The closed shop has been present in the American
labor movement for over 150 years, and during that time
the basic reason why workers have supported the closed
shop was because it provided the best defense against
the attacks of anti-labor elements.

2. The position of the courts toward the closed
shop has been one of increasing willingness to under-
stand the position of both labor and management in con-
cluding closed-shop agreements. This was true until
the passage of the Taft-Hartley closed-shop ban.

3. Arguments offered by opponents of the closed
shop do not stand up very well to critical analysis.
There is little basis in fact for the position that the
closed shop violates the so-called "right to work" or
"right not to join." These contentions have been re-
jected by the courts as having small basis in precedent
or in principle.

4. The prohibition of the closed shop and the re-
strictions placed upon the union shop by the Taft-Hartley
Law were a fulfillment of the wishes of some of the
strongest opponents of labor. It caused a reversal
in the policy of the National Labor Relations Board, and invalidated contracts covering thousands of workers. It completely ignored the force of tradition in industries in which the closed shop was commonplace for more than a century.

5. Prohibition of closed shop agreements did not take into consideration the service rendered to both employers and employees in industries where intermittent employment, itinerant workers, advance bidding on jobs, work of short duration, and pools of skilled workers were involved.

6. The reaction of labor to the closed-shop ban varied from vigorous and open opposition to quiet non-compliance with the law. The closed shop ban forced many unions to choose between dutiful compliance, and loosing the advantages gained for workers after decades of struggle, and willful non-compliance, with the attendant risk of action against them by the NLRB and the federal courts. In the printing industry the result was over four years of unrest and legal action. At the end of that time there was still no clear proof that anything approaching compliance with the law had been achieved. In the maritime industry there was outright refusal to comply with the law, since compliance probably would have resulted in the destruction of the maritime
unions through the elimination of the union hiring halls. In the construction industry there has been little success in eliminating the closed shop and the union hiring hall, because many employers are in complete agreement with the unions that it is the only workable and efficient means of operation.

7. Almost seven years after its passage, the Taft-Hartley-Law has still failed to eliminate the closed shop. It has principally functioned as a tool of harassment for those individuals or groups who are hostile to some particular labor organization or towards the unions in general.

In the light of the above conclusions, the following recommendations are made to relieve the present situation:

1. The closed-shop prohibitions and the union shop restrictions should be removed from the law.

2. Language of the law should clearly condemn closed shop abuses such as excessive initiation fees, closed unions, etc., but the law should apply to all organizations which engage in such practices.

3. Mere lifting of the prohibition and restrictions for certain groups should not be considered sufficient, since the conditions found in the three industries
discussed exist in varying degrees in other areas.

4. The National Labor Relations Board should not be forced into the position of being a union breaker, as it is by the present ban on the closed shop.

5. Union security agreements should be at the option of employers and unions, not banned by law.
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