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Union Security in War-Time [Part 2]

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UNION SECURITY IN WAR-TIME

By LUCILE LOMEN

*(Continued)**

AWARD DENIED

In July, 1943, *Business Week* summarized union maintenance in the following words:

> "Fostered with vigor and persistence by NDMB, and by its successor, the National War Labor Board, membership maintenance has, in two years, developed from what was hailed as 'a clever compromise' designed to settle a thorny labor dispute to a nearly universal union pattern covering the nation's basic industries."[90]

From an extraordinary provision, it became a fundamental provision to be included in almost every directive. Because of this, the bases for denial of the clause are all the more important and are an essential to complete understanding of the Board's position in regard to union security.

Violation of the no-strike pledge where there are no mitigating circumstances is a standard bar to a maintenance provision. A unanimous decision of the Board in the *Monsanto Chemical Company* case[91] denied both check-off and maintenance of membership because a strike was called in spite of the union's assurances that it would not use the strike as a weapon to secure a settlement of its disputes with the management. The decision to call the strike had been given by the union's leaders, which placed responsibility for the strike squarely on the union. The directive ordered that no form of security should be granted until the union demonstrates that it has adopted a change of attitude in regard to the use of the strike during the war period. However, the Board declared that it would keep in touch with the case to prevent the company's taking advantage of the refusal to grant union maintenance. Declared the Board, in its opinion:

> "The important point for all concerned to remember is that when labor agreed to forfeit its right to strike for the duration of the war the government provided it with an orderly and impartial tribunal to settle its disputes with industry. So long as the National War Labor Board functions, there is neither need nor justification for strikes. Certainly it must be clear to everyone that the War Labor Board as an agency of the federal government and acting under Executive Order should not and will not be swayed by economic pressure brought to bear by either management or labor."

Seven months after the union's strike, it was awarded a maintenance clause, the Board finding that it had "learned its lesson."[92]

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* The first installment of this article appears at 19 WASH. L. REV. 133.

[90] July 24, 1943, p. 94.

[91] Monsanto Chemical Company, NWLB No. 292, August 17, 1942.

[92] 12 LAB. REL. REP. 97, March 22, 1943.

The *Monsanto* case was precedent for denials predicated upon the same policy, but the directive used in subsequent cases was modified to provide a definite period at the end of which the Board would reconsider the case.[93] The labor representatives dissented to the denial for violation of the no-strike pledge, decrying use of the maintenance award as reward or punishment and urging that its primary function, and the only one to be considered by the Board, was to promote solidarity. The majority disavowed an intent to punish the union but explained its position as being one which would not give security to irresponsible unions—irresponsibility being shown by violation of the no-strike agreement. In the *Chrysler* case,[94] maintenance was withheld for numerous wartime strikes and a permanent umpire was appointed to handle arbitration. The employers presented a completely documented brief containing evidence of union irresponsibility and instability which left the "NWLB no alternative except to refuse the union's demand for mm."[95] This particular decision was all the more notable because the Board had not made much use of the policy laid down in the *Monsanto* case after the first few weeks of its existence.

It is not difficult for the Board to find mitigating circumstances which distinguish the cases sufficiently to permit a modification of the general policy to withhold security until the union proves its responsibility. Despite a record of irresponsibility including a strike before Pearl Harbor and a poor attitude after the entry of the United States into the war, a maintenance clause was granted in the *Allis-Chalmers* case.[96] The only restriction in the provision was a clause requiring voluntary assumption of membership maintenance by individual members before they would be bound. In view of the extreme record of irresponsibility and failure to cooperate, falling just short of actual strike, it appears that the Board will countenance any activity which is not an actual violation of the labor pledge.[97]

Where stoppages have occurred but the union officials have cooperated to prevent them, security will not be withheld, although it will be granted subject to withdrawal.[98] If the union officials are acting in good faith but wildcat strikes occur contrary to their direction, maintenance of membership will allow the union to gain more control over their members to the end that further work stoppages will be prevented.[99] Those cases in which security is denied because of

[93] General Chemical Company, NWLB No. 267, September 19, 1942; Pettibone Mulliken Corporation, NWLB No. 326, October 20, 1942.
[94] Chrysler Corporation, NWLB No. 3950-D (960), August 27, 1943.
[95] BUSINESS WEEK, August 28, 1943, p. 98.
[96] Allis-Chalmers Manufacturing Company, NWLB No. 211, March 30, 1943.
[97] Regional boards are more strict, see 13 LAB. REL. REP. 505, 582.
[98] Sement Solvay Company, NWLB No. 547, March 19, 1943.
[99] *See* 11 LAB. REL. REP. 497.

strikes even though the union leaders declare that the strikes were unauthorized[100] are explainable by the amount of assistance to prevent work stoppages given by the union leaders. The opinions do not make the distinction clear, but apparently active cooperation by union leaders will overcome the effect of the work stoppage so that maintenance will be awarded. It is not the duration of the work stoppage, but the spirit and intent of the union leaders that is most important in these cases. Depending upon the circumstances of the individual case, the Board will withhold the union maintenance award during a probationary period, grant it conditionally or will grant the standard clause without any condition.

A second reason for denying union security, resorted to only by the regional boards, is the provisions of the union by-laws. If they are considered "dangerous" or undemocratic, the award is not made. The Boston Regional Board denied the clause when it was shown that under the by-laws the members would be fined, suspended or expelled for (1) making false statements about an officer or member, (2) being profane, arguing or refusing to obey the chairman at union meetings, or (3) making public what went on at the union meeting. These regulations were denounced by the Boston Board as "too loosely defined" for the safety of the members.[101] If workers were forced to remain members in order to keep their position, the union boss would be given great power under these by-laws. Later, when the by-laws were revised, the Board granted maintenance of membership. The Detroit Board refused to deny union maintenance on the basis of dangerous by-laws as the threat was only potential—not actual. Said the Detroit Board, "Should this union act arbitrarily in expelling members and then insist that they be discharged under the union maintenance of membership provision, it may be that this Board should cancel union maintenance of membership. In the absence of a showing that the union has acted in this fashion, we deem the argument presented by the industry member of the panel to be unsound."[102] To date no case has been found in which the National Board was confronted with this problem, but the prediction is hazarded that it would follow the Detroit Board. The position taken by the Boston Board is subject to the criticism that the agency is interfering in internal union affairs, a criticism the National Board would seek to avoid if possible.

To summarize, maintenance of membership will be denied if the union has engaged in war-time work stoppages unless they are wildcat in nature and contrary to the directions of the union officials.

[100] Borg-Warner Corporation, NWLB No. 517, March 15, 1943.

[101] 12 LAB. REL. REP. 739, July 19, 1943; BUSINESS WEEK, July 24, 1943, p. 94.

[102] 13 LAB. REL. REP. 300, November 15, 1943.

Though union responsibility is made a basis of the maintenance award, union irresponsibility is not a basis for denying the security in every instance, but there must be a showing of special circumstances to warrant the denial.

The Clause in Action

The standard clause, with the fifteen-day escape provision, still is the usual form of maintenance award but there have been many variations, in keeping with the Board's declaration that each case is to be decided on its own facts and no decision is to be considered binding precedent. Where the Board is convinced that maintenance is not enough, it might combine that clause with the check-off of dues, a preferential hiring provision or some other device to achieve the balance between employer and employee status which will result in the balance of power conducive to most effective production effort.

It is a general policy of the Board not to add a maintenance provision to the preferential hiring clause, or *vice versa,* but special circumstances in the labor market will cause it to grant both regulations. In the *Shell Oil Company* case[103] the union had a preferential hiring contract, but maintenance was granted in addition because standards of the company forced it to reject many of the applicants submitted by the union and the shrunken labor market made it impossible to furnish employees within the 24-hour period required by the hiring clause. Denial of this same provision in subsequent disputes has usually been based on the fact that no "special circumstances" were shown. There has been no misuse of this provision and the Board has rigorously opposed the combination of security clauses unless it was convinced that the war effort demanded such measures. The effect of maintenance combined with check-off will be discussed *infra;* it is sufficient to indicate at this point that the check-off is frequently combined with maintenance as the two have complementary functions to perform.

An insignificant modification of the standard clause was made at the request of Crittall-Federal, Inc.[104] which desired a statement in the maintenance provision to the effect that the provision was included solely at the direction of the Board. This is cited merely to indicate that the Board is willing to cooperate with whatever individualized policies do not impede its major objectives.

A more important modification is the one worked out in the *General Petroleum Corporation* case.[105] The clause awarded required that at least 51 per cent of the companies' maritime employees be

[103] Shell Oil Company, Inc., NWLB No. 288 (2416-D), June 1, 1943.
[104] Critall-Federal, Inc., NWLB No. 2291-D, April 24, 1943.
[105] General Petroleum Corp., *et al,* NWLB No. 111-315-C, November 1, 1943.

union members. This percentage was determined by the number of employees who had been union members at the time of an NLRB election held in 1942. Pacific Coast unions had generally worked under contracts that gave them a much higher degree of security than did this one recommended by the Board. The special circumstances of the shipping industry make maintenance of membership impracticable, but the clause here ordered allows the employer complete freedom of hiring so long as he has the correct percentage of union men. By this means, the unions are assured a certain stability and at the same time the employer is not bound unnecessarily so as to make it impossible for him to operate.

After a year of experience with the standard clause, the Board found it advisable to add procedural requirements making more definite the administration of the clause. This was done by adding a provision that employees might get full information as to the operation of union maintenance and to protect them against possible coercion by the union or unwarranted discharges under the clause. The notice advising employees of their rights, including the right to withdraw during the escape period, may be posted by either party, and the actual date of expiration of this period is included where formerly the clause read "15 days after the date of the directive order." Procedure was established for taking disputes over union membership to an arbitrator, giving notice of delinquency in dues payments and a time in which to pay up before suspension.[106] Under the original clause, many disputes arose over various administrative phases and the unions contended, in some cases, that the employers attempted to encourage resignations during the escape period while the employers countered with the charge that the unions coerced the men into continued membership or withheld adequate explanations from them so that they did not know of their right to withdraw. The more detailed provisions of the revised provision were drawn up in the light of these complaints and clarify the points of difference by placing definite responsibility on union and management. Regional boards had broken the ground by ordering that notices be posted informing the employees in simple language of the terms of the order and their rights under it.[107]

The standard clause provides that retention of membership in good standing is a condition of employment but some of the maintenance provisions are not so worded. However, it is the duty of the employer to discharge employees who have lost good standing, regardless of the terms of the provision in the contract. This was decided in the *Kennecott Copper Corporation*[108] dispute, involving

[106] 13 LAB. REL. REP. 405, December 6, 1943; National Carbon Milk Company, Inc., NWLB No. 111-799-D (V-D-85), November 25, 1943.
[107] 12 LAB. REL. REP. 738, July 19, 1943.
[108] 12 LAB. REL. REP. 769, July 26, 1943.

one-third of the employees. The employer wrote letters to the delinquent employees and offered to check off dues, on a voluntary basis, but the maintenance clause without the discharge provision has the same effect as the standard clause and dues delinquency must result in discharge. Procedure worked out for handling delinquent members under the standard clause involves a report by the union of delinquent members, a warning to these members, a hearing before a joint union-management committee in cases of continued delinquency, followed by discharge of the employee or, if coercion is claimed, arbitration of the issue followed by the arbitrator's decision. This provides the employer an opportunity to know whether employees actually are delinquent and provides the employee notice and hearing so that he cannot be wrongfully discharged under the maintenance provision.

The maintenance provision has been used to avoid the job freeze. Workers desiring to leave a position had simply to become delinquent in membership, whereupon the employer was forced to discharge them. Of course, WMC rulings and draft board regulations controlled this practice to a certain extent, but the practice did gain headway in some areas. The Atlanta Regional Board met the challenge with an unusual provision designed to protect the employer from such tactics. The Board included within the standard maintenance clause the proviso that the union had to furnish competent and acceptable substitutes before workers could be discharged for lapse in union membership.[109]

The escape provision of the standard maintenance clause operates to permit a union employee to resign from the union, during a given period, without jeopardizing his right to continue his employment. Under a maintenance clause without the escape period, any severance of union affiliations must, according to the terms of the maintenance clause, result in a worker's discharge. After the standard clause had been in use for some months, the question arose as to whether an escape clause should be included in the renewal contract. Because of the hundreds of cases in which union maintenance has been awarded, the problem was very important to the unions since all of the stability and status they had attained under the maintenance clause might be lost in the fifteen-day period between contracts during which time workers could resign. The Board ruled that the escape clause should be contained in the renewal contract on the theory that the original maintenace clause was binding only for the duration of the contract and as a matter of principle the employees should be given a chance to resign from the union upon termination of the contract.[110] However,

[109] 13 LAB. REL. REP. 138, Oct. 4, 1943.

[110] Federal Shipbuilding & Dry Dock Company, NWLB No. 25-390-D, 111-2612-D, October 30, 1943.

before resigning under an escape provision, the member must pay all back dues.[111] This involves the concept of living up to one's obligations and raises no legal question.

A more detailed work would include further examples of complications and the manner in which the Board has adjusted its rulings to cover the particular circumstances. The foregoing discussion briefly indicates some of the problems that have arisen under the maintenance of membership provision but it does not purport to be exhaustive. It must be borne in mind when considering the War Labor Board's rulings that each opinion speaks only for itself, though there are general principles and policies governing the action of the agency. Generally, the principles in this field of the Board's activities stem from the policy of granting maintenance unless some reason is shown why it should be denied and formulating all regulations to the end that the rights of the union, the management and the individual will be harmonized.

LEGALITY OF THE CLAUSE

Under the War Labor Disputes Act,[112] the War Labor Board is required to conform to the terms of the Wagner Act, which raises the question as to whether maintenance of membership is in violation of the earlier labor legislation. By section 8(3) of the Wagner Act it is made an unfair labor practice for an employer to encourage or discourage membership in any labor organization, though an employer specifically is empowered to "require, as a condition of employment, membership" in a union (*i. e.*, closed shop). The War Labor Board and its predecessor, the National Defense Mediation Board, have consistently ruled that the maintenance of membership provision is not contrary to this section of the Wagner Act. The position of their counsel is that the exception which legalized the closed shop extended also to maintenance. Though maintenance is not as broad as the closed or union shop, as to those members who are in good standing at the expiration of the escape period, the company can "require, as a condition of employment" continued membership. In fact, the preferential hiring clause, which is less than closed shop, has been upheld by the courts.[113]

The statement from the general attorney of NLRB, Mr. Watts, was given upon request from the WLB when the Federal Shipbuilding and Drydock Company challenged the Board's power to grant a maintenance contract.[114] The majority opinion[115] in the case did not

[111] 13 LAB. REL. REP. 331, November 22, 1943 (order of the Shipbuilding Commission).

[112] Sec. 7(a) (2).

[113] Peninsular & Occidental Shipping Co. v. NLRB, 98 F. (2d) 411 (CAA 5) *cert. denied* 305 U. S. 653.

[114] 10 LAB. REL. REP. 317, May 4, 1942.

[115] Federal Shipbuilding & Drydock Company, NWLB No. NDMB 46, April 27, 1942.

get down to fundamentals but stated that "Our Congress, our courts and our history make the answer that our democracy can lawfully make war to save our democracy." However, Chairman Davis, in a concurring opinion, set forth the points in clear detail: He listed the company's objections as two: (1) that it is contemplated by the NLRA proviso that closed or union shops are the only ones and so that maintenance or anything else is illegal on the construction theory that when Congress expresses approval to one thing it excludes the legality of the other alternatives and (2) that by providing such an agreement, Congress precluded any other method by which the obligation of a maintenance clause might come into effect. These he answered with three points: (1) with respect to the first contention namely that the proviso necessitated the conclusion that only a closed shop is legitimate under the statute, the answer seems to be that the whole includes its parts as a matter of common sense construction. Certainly it is anomolous for some one who is opposed to a maintenance clause to base his argument against the clause on the ground that Congress by a statute permits only a closed shop because the Board undoubtedly would grant closed shops in many cases where now the maintenance clause is deemed sufficient. (2) With respect to the second argument it should be observed that the maxim of construction that where a legislative body expresses itself with respect to one subject matter, it excludes all other subject matters, is one of very definite limitations. For example, Mr. Davis suggested that if Congress passed a statute now making all gambling contracts legal, it would be fruitless to argue from such a statute that by virtue of its very existence some other form of contract is illegal. Nor can it logically be argued, according to this opinion; that by putting its stamp of approval on an agreed closed shop or some modification of a closed shop, Congress intended to preclude the Board, in time of war, from granting a form of union security which meets the practical needs of the war situation. (3) Lastly, he propounded, the National Labor Relations Act is in truth the buckler of labor and it clearly was not the intent of Congress that the buckler should be thrown away in time of war and turned against labor by ingenious legal arguments.

The Board proceeded on the above outlined theory and granted maintenance in 165 cases prior to the adoption of the Connally-Smith bill. After the early cases had been published the authority of the Board to award maintenance was not seriously challenged, which is perhaps some indication of the belief in its validity. But during the discussion preceding the passage of the Connally-Smith bill, the powers of the War Labor Board were examined and a proposal was made to ban the use of the maintenance provision. This proposal was defeated by an overwhelming vote. From these facts, counsel of

the War Labor Board argue[116] that the unqualified intent of Congress in adopting section 7(a) (2) of the War Labor Disputes Act was to leave intact the powers which had been exercised by the Board during the previous 18 months of its existence.

A congressional investigation[117] resulted from the split over the Board's authority under the Disputes Act, with the seven-member committee dividing 5 to 2 on the subject of the legality of union maintenance. The majority found that the security device was clearly contrary to the Wagner Act, hence violative of the Disputes Act. The minority defended the Board on the same grounds as outlined above. The minority report is much more convincing because of the detail which distinguishes it from the majority report. Because of the large number of cases in which maintenance has been granted,[118] it would appear that more persuasive arguments against its validity than have yet been advanced must be urged if the policy is to be struck down by the courts. Actually, as the directive for the standard clause is framed, the maintenance provision does come within the language of the Wagner Act. That language is not unambiguous, perhaps, but the more persuasive arguments are for resolving the ambiguities in favor of the clause.[119]

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[116] 13 LAB. REL. REP. 406, December 6, 1943.

[117] Seattle Times, January 26, 1944; 13 LAB. REL. REP. 647, January 31, 1944.

[118] "The best answer to the question as to whether the War Labor Board has a maintenance-of-membership policy is in the record. In 291 cases involving maintenance of membership, the National Board, between January 12, 1941, and February, 1944, decided 271 cases in favor of maintenance of membership and in two cases submitted the issue to a referendum of the employees. The provision was denied in 18 cases. In 817 cases involving the maintenance of membership the regional boards and commissions decided 783 cases in favor of granting maintenance of membership while in 34 cases the provision was denied by the regional boards and commissions. From January 12, 1941, to February 29, 1944, the National War Labor Board in 271 decisions provided maintenance of membership for 1,409,050 workers. Between January 21, 1943, and February 29, 1944, the regional boards and commissions, in 783 decisions, granted this provision to 351,000 workers." Humble Oil & Refining Co., *supra* n. 54.

[119] Until April, 1944, the Board had not considered the question in a formal opinion, but the Humble Oil & Refining Company decision lists the bases of authority for the maintenance clause, as follows:

"(1) The national no-strike, no-lockout agreement that the President establish a national board to settle all labor disputes by peaceful means;

"(2) The Executive Order of the President setting up the tripartite National War Labor Board to settle all unresolved labor disputes;

"(3) The unanimous decision of the Board, after long and careful consideration, to accept jurisdiction of the union-security issue;

"(4) The unanimous decisions of the Board in 35 cases to grant maintenance of membership as a settlement of this issue and the unanimous decision of the Board in cases of non-compliance to call upon the President for enforcement of majority decisions for maintenance of membership;

"(5) The exercise of the war powers of the President for such enforcement;

"(6) The refusal of Congress, in giving legal sanction to the War Labor Board, to take this authority away from the War Labor Board and the refusal of Congress to make decisions of the Board subject to judicial review."

Check-off: A security measure somewhat weaker than the maintenance award is check-off, an agreement between an employer and a labor organization whereby the employer deducts the union dues from the pay checks of union employees. The employers contend that collection of dues is exclusively a union concern. They resent acting as financial agents to the ultimate benefit of the union because it increases their overhead through the additional bookkeeping burden and they are afraid that individual employees who possibly do not desire to pay dues regularly will resent management deductions.[120] Neither of these points is very persuasive, however. The bookkeeping burden placed on the employer is slight when compared with the burden the union has in collecting from its membership, distributed over a large area. Moreover, provision is usually made for the employer to retain a small percentage of total collections as compensation for his services. In normal times, the union's burden would not be an important consideration, it being one intrinsic to the administration of a union and a union responsibility. But in these present chaotic times, economic waste can be curtailed by having the employer, who has records on all employees, check off the dues, thus avoiding duplication in union and management records and reducing the union accounting staff to a minimum.

Check-off has been granted only where circumstances indicate that union stability is dependent upon it and not merely for union convenience.[121] Informed employees will not direct their resentment against the employer for withholding dues as the employer has no choice in the matter but must make the deductions according to the contract. Furthermore, it should not be presumed that a union member is unwilling to pay his dues and without this presumption there is no basis for the employers' contention that employees will resent management deductions. Moreover, the contention of some unions that check-off is essential to their financial stability is a fact. Union offices are far from the places of members' employment; communication may be difficult, making dues expensive to collect.[122]

The War Labor Board has granted check-off of union dues in a large proportion of its cases. It has been opposed by the companies on legal grounds of conflict with congressional legislation and with state laws prohibiting assignment of future wages.[123] Neither objection has been upheld by the Board; the first overruled on grounds

A dissent by the employer members of the Board questions the authority of the Board to issue maintenance of membership directives.

[120] LIEBERMAN, COLLECTIVE LABOR AGREEMENT (1939) p. 69.

[121] Mack Manufacturing Company, NWLB No. 76, September 4, 1942.

[122] Lieberman, *supra* n. 61, pp. 69, 70.

[123] 13 LAB. REL. REP. 186, October 18, 1943 (not violative of Wagner Act to allow check-off to minority union, if no allegation of company domination: Dallas Board); Little Steel Case, NWLB Nos. 30, 31, 34, 35, July 16, 1942; Lone Star Cement Corp., NWLB No. 371, November 28, 1942; J. Greenbaum Tanning Company, NWLB No. 879, August 28, 1943.

of wartime necessity and absence of fundamental conflict, the second because the assignment statutes were passed to protect workers against "loan sharks" and should not now be construed to the disadvantage of the class they were designed to protect.

Like the maintenance clause, check-off is a flexible device, awarded in varying forms according to the exigencies of the case. It may be voluntary or involuntary, revocable or irrevocable, combined with union maintenance or without it. Where maintenance of membership is adequate security[124] or where the union already has financial stability,[125] check-off is denied. Contrary to the position of the Board in regard to maintenance, check-off will not be granted unless special need is shown.[126] Thus, where increased difficulties of dues collecting due to gasoline rationing were not sufficiently great to weaken the union, no security was awarded.[127] Similarly, where the number of union employees is relatively small, the necessity for check-off cannot be shown.[128] Or where there is no restriction against collecting dues on company property, the union has no cause for this security.[129] Usual justification for the award is found either in dues collection difficulties caused by the number of employees,[130] widely separated residences of members coupled with weekly payment by check,[131] or other similar impediments to collection, or because the employer objects to collections on company time and property.[132]

Voluntary check-off is the type most frequently granted. In the early cases where check-off was allowed, the Board specified that written authorization from each employee was a condition precedent to company deductions.[133] The unions objected to the requirement of written authorization on the ground that this would reveal union membership to the possible prejudice of employees. In *Remington Rand Company, Inc.*,[134] the written authorization was made revocable

[124] Norm-Hoffman Bearing Corp., NWLB No. 120, Aug. 24, 1942; Allied Chemical & Dye Corp., *et al*, NWLB No. 636, March 27, 1943.

[125] Cambridge Tile Mfg. Company, NWLB No. 113, Aug. 1, 1942.

[126] Oliver Farm Equipment Company, NWLB No. 452, March 30, 1943.

[127] Robinson Clay Products Co., *et al*, NWLB No. 736 (2864-D), June 11, 1943.

[128] The Lucas Machine Tool Company, NWLB No. 111-204-R, Sept. 3, 1943.

[129] Lehigh Portland Cement Company, NWLB No. 111-93-C, Aug. 26, 1943.

[130] United States Cartridge Company, St. Louis Ordnance Plant, NWLB Nos. VII-D-127 (111-1446-D), VII-D-128 (111-1447-D), and VII-D-130 (111-1445-D), Dec. 10, 1943.

[131] Wortendyke Manufacturing Company, NWLB No. 3016-D (887), July 22, 1943.

[132] Delta Star Electric Company, NWLB No. 746, April 23, 1943; American Radiator & Standard Sanitary Corporation, NWLB No. 111-2637-D, Jan. 6, 1944.

[133] Marshall Field & Company, NWLB No. 10, Feb. 25, 1942; Bower Roller Bearing Company, NWLB No. 12, March 11, 1942; Armour Leather Company, NWLB No. 98, June 10, 1942.

[134] NWLB No. 44, April 23, 1942.

upon sixty-day written notice. This pattern has been followed in other instances, with the period of notice being modified in later decision.[135] The security element in voluntary revocable check-off is somewhat obscure at first consideration, but actually the workers would fear publicity likely to result from a refusal to sign, so that the device has been effective. Where check-off has been combined with the maintenance award, it is made irrevocable; because the maintenance clause requires continued membership in good standing, irrevocable check-off is entirely consistent with it.[136] Merger of irrevocable check-off with maintenance prevents attempts to evade the job freeze order by denying to the worker an opportunity to become delinquent. The CIO advocates[137] a more general recognition that check-off should accompany union maintenance awards. Though regional boards[138] have expressed sympathy with this position, the National War Labor Board has not proceeded on the theory that check-off is a hand-maiden to maintenance but has employed it as an independent device and when combined with maintenance it is because of circumstances justifying more security than maintenance alone affords.

Compulsory check-off is awarded where union rivalry or management hostility increase the danger to the bargaining union.[139] Moreover, compulsory check-off sometimes is granted with the standard maintenance clause in the interest of efficiency.[140] Where compulsory check-off has existed in prior contracts, that furnishes, in itself, sufficient basis for granting this degree of security. Theoretically, compulsory check-off in all maintenance cases would be the efficient and expeditious manner of handling the problem, but a democratic way of life does not place expediency ahead of personal rights and convictions. There is merit in the suggestion that check-off destroys the initiative of the union member since it removes one of the acts which is normally the result of group membership. Under this arrangement, the unions themselves are asking the employers to perform a task which by its very nature should be performed by the unions. In this dependence upon outside assistance there is the danger of weakening or ultimately losing the capacity and power to bargain. The union which is independent of outside assistance and depends upon the morale of its members to carry on its activities

[135] Lexington Telephone Company, Inc., NWLB No. AR-43, Feb. 19, 1943; Texas Company, NWLB No. 571, April 3, 1943.

[136] Remington Rand, Inc., NWLB No. 424, March 26, 1943; Ralston-Purina Company, NWLB No. 503, Oct. 24, 1942; Berwind White Coal Mining Company, NWLB No. 111-456-D, Feb. 1, 1944.

[137] CIO Convention, 11 LAB. REL. REP. 333, Nov. 16, 1942.

[138] National Carbon Company, Inc., NWLB No. 111-799-D (V-D-85), Nov. 25, 1943.

[139] Automatic Transportation Company, NWLB No. 442, April 14, 1943.

[140] Combustion Engineering Company, Inc., NWLB No. 2855, April 19, 1943; Bethlehem Steel Company, NWLB No. 117, April 21, 1943.

has a better foundation for post-war advancement than does the union which requires employer assistance, secured by governmental order, to collect dues, an essentially intra-union problem. The deleterious aspects of check-off are not present where the union has secured the arrangement through bargaining, but third-party directives do not enhance their status, they only insure a continuation of the formalities without strengthening the spirit or loyalty fundamental to successful group achievement.

A security device occasionally employed by the Board is an award of check-off for all employees, regardless of union membership.[141] Union dues, not to exceed a certain fixed sum, are deducted from all wages, to compensate the union for the benefits it gains for all workers alike. Where no maintenance provision is in force, the union may face a loss in membership since all employees enjoy the advantages derived through collective bargaining, hence no inducements for union membership can be put forward. This has been circumvented by provisions that the union would represent non-union as well as union employees, in effect making all employees union members as to dues and bargaining rights without imposing other union duties upon the employees. Even where a work stoppage causes a denial of the maintenance clause, voluntary irrevocable check-off may be granted, if there are factors present to justify some form of security. The escape clause has been added to the irrevocable check-off, in some instances, allowing a worker to revoke, in writing, his authorization of deductions. As worked out in the *Wright Areonautical Corporation case*,[142] a fifteen-day escape period would be allowed at the end of each contract year, for the duration of the contract. Taking into consideration the philosophy which inspired the check-off device, use of the escape clause should be more conducive to union stability than the revocable check-off provision which results in a degree of uncertainty as to yearly union income.

That the check-off privilege is purely contractual was determined by the New Jersey Chancery Court.[143] Even though the regularly conducted election resulted in a transfer of affiliation from the AFL to the CIO, the CIO union could not maintain proceedings to restrain the employer from turning over to the AFL union dues checked off under the contract. None of the individual employees asserted any injury to his individual rights, though the workers did have an interest in the fund collected for union dues. Had an individual brought the action, injunction might have issued, but the CIO was not party to the contract and had no standing to sue.

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[141] 10 LAB. REL. REP. 195, April 6, 1942.

[142] NWLB No. 111-1375-D, Oct. 3, 1943.

[143] 13 LAB. REL. REP. 160, Oct. 4, 1943.

APPRAISAL

Prior to the creation of the NDMB, private industry generally had made little use of union security clauses in the promulgation of collective bargaining agreements. However, Crown Zellerbach Corporation pioneered in granting union maintenance and a modified check-off long before the NDMB came into being. Its Director of Industrial Relations, Alexander R. Heron, stated, after maintenance had been tested for over five years in more than 30 separate Zellerbach mills involving nearly 15,000 employees, that it had brought peace in industrial relations. He summarized:

> "A union without this measure of protection must in effect re-sell itself to every member every month against the threat that he will not pay his next month's dues. All it can offer such a member is the effort to secure concessions from the employer. In actual experience, union committees who have this 'maintenance of membership' clause behind them show increasing willingness to distinguish between just and unjust grievances. They decline to become errand boys for chronic complainers."[144]

And in regard to check-off, he wrote:

> "We have never signed an agreement providing for check-off or requiring an employee to join a union. We do protect a union with which we have a contract in the collection of its dues, however. If an employee joins such a union of his own volition, he thereby becomes a party to the agreement, and one of his duties is to maintain his membership in good standing. In many ways, we have gained more than the union has from this policy. Previously, the grievance committee was busy selling the grievance procedure to anyone who imagined he had a grievance—otherwise the union feared that dues payments would fall off. When the union no longer had to coax men to pay their dues, the grievance committees were able to refuse to handle unjustified complaints."[145]

These statements are peculiarly valuable testimony because they epitomize the workability of union security, even in times of peace. Recently, public opinion has taken a more antagonistic turn in regard to labor unions, the feeling being primarily generated by union-sponsored wartime strikes and demands for increased wages. The picture of unionism is complicated, therefore, by the indefinable character of public response to labor problems colored by emotions heightened through wartime propaganda. Until military operations approach a close, and public temper gives way to reasoned opinion, it is too early to prognosticate on the fate of unionism. However, the pre-war labor relations in the Zellerbach mills indicate that some industrialists have learned the value of joint enterprise and cooperative

[144] 9 LAB. REL. REP. 276, Nov. 17, 1941.

[145] HERON, *Collective Bargaining in Action*, COLLECTIVE BARGAINING CONTRACTS (1941) p. 21.

effort. The widespread use of security measures, even at governmental instigation, has given employers, by and large, a new understanding of the role a responsible union can play in industry. From this compulsory adoption of union maintenance and similar measures, labor and management have a factual basis upon which to establish post-war relations.

Mute evidence of what specialists in the field think of union security is found in reports released periodically by the Bureau of Labor Statistics covering War Labor Board recommendations. Although only about 45 per cent of all workers in private industry work under collective bargaining agreements, approximately 70 per cent of all employees working under union contracts are covered by maintenance clauses, closed shop or union shop provisions.[146] It is significant, however, that the number of employees working under contract is constantly increasing and that the percentage of those working under union security clauses is also mounting steadily. After approximately two years of experience, the members of the War Labor Board continue to rely on union maintenance as a major influence in promoting production. Its policy of granting security unless some reason is advanced for denying it is extremely convincing evidence of the successful operation of the unions given this support.

An official survey of plants operating under the membership of maintenance clause was made in the fall of 1943.[147] The statistics gathered in making the survey showed that whereas union membership had increased, the proportion of union workers to the total number of employees had remained fairly static. Increase of membership, of course, was the result of war-time production increases. Union security has not become the economic boomerang that some of its opponents feared would result through wide usage of it. Rather, the policies of the War Labor Board have been vindicated in this survey showing that the unions have been able to maintain their strength despite unfavorable conditions and at the same time American workers have retained, to a large extent, their independence of action. Few withdrawals were made during the escape periods and few discharges were caused by failure to keep up union membership. Where dues delinquency was notoriously bad, the unions did not always take advantage of the discharge provision of the maintenance clause, so the figures are not an accurate indication of membership response, but the generalization can safely be made that union maintenance has given stability to labor organizations. Stability of the unions, in turn, was found to lead to stability of union-management relations.

[146] 14 LAB. REL. REP. 212, April 24, 1944; 30 per cent of all union contracts provide for closed shop, 20 per cent grant m of m and 0 per cent grant union shop.

[147] 13 LAB. REL. REP. 76, Sept. 20, 1943.

Employers, according to the Bureau's analysis, are reconciled to maintenance provisions. Their acceptance is, basically founded on a realization of war-time necessity for harmonious relations. Such a feeling will not have any carry-over into post-war labor treatment unless the unions prove so cooperative that the employers will desire to continue the harmonious relations. Many employers, even as early as September, 1943, expressed genuine desire to establish effective collective bargaining relations. This can only be done by having strong and intelligent unions meeting as equals with progressive and understanding employers. Whether maintenance can continue after the war will depend largely upon the attitude of union leadership now while it is in a position to prove its responsibility.

In general, the response to War Labor Board supervision has been satisfactory. There are some outstanding instances of opposition predicated upon a belief that the Board supersedes its authority by granting union security. But the labor versus management attitude is so firmly embedded in the American capitalistic system that it is only natural to have opposition in these days of transition in labor relations philosophy. "Cooperation," has become an ideal only within the last couple of decades. Whatever the fate of union security after the disbandment of the War Labor Board, it is believed that the principle will not be cast aside but will be used in giving greater stability to the unions. The lessons learned about security clauses as administered by the War Labor Board will undoubtedly be employed in drafting post-war labor contracts. But if the unions are to achieve the goals toward which they have been working since their inception, it is necessary that they rely on their own initiative, both now and in the future.