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LABOR RELATIONS

EXCEPTIONS TO COMPULSORY UNION MEMBERSHIP

The personnel director of a well-known *Fortune* 500 company was speaking to a personnel management class at a Midwestern university. The topic of the manager's presentation was the current status of labor-management relations.

Toward the end of the discussion, he addressed the subject of his own company's labor agreement with the union representing nonsalaried employees. His comment was, "It's too bad our employees have to join the union in order to maintain their employment with the company. Our contract has a union shop clause that requires employees to join the union within 30 days after employment as a condition of continued employment. But I know that some of our employees would prefer not to join the union."

The prevailing belief appears to be that some labor agreements require compulsory union membership, and that this requirement is backed by law. However, this may not always be the case.

Compulsory unionism is a practice in which unions, through a collective bargaining agreement, require that workers in the bargaining unit represented by the union become members of that labor union. Labor unions contend that universal membership is essential to the proper functioning of the union and ensures union control over the represented workers.¹ However, although unions generally support the practice of compulsory unionism, employers and some employees oppose compulsory unionism for several reasons.

From an employee's perspective, compulsory unionism represents a severe restriction of freedom of choice.

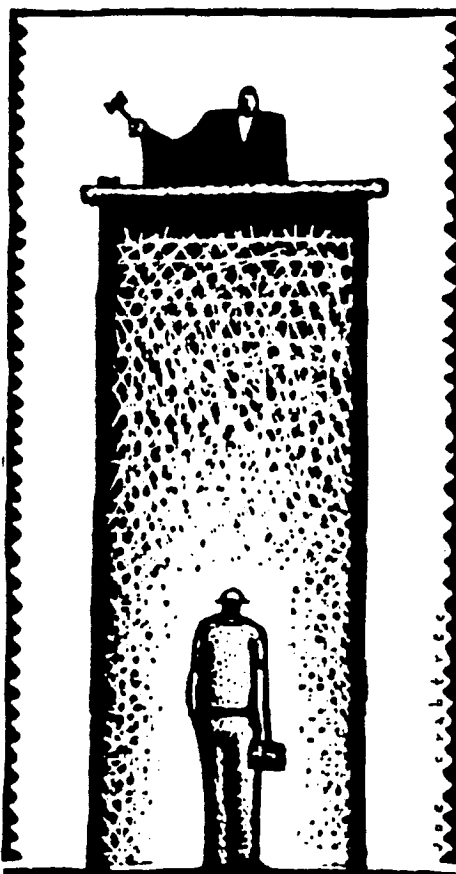


ILLUSTRATION BY JOE CRABTREE

The National Labor Relations Act (NLRA) as amended by Taft-Hartley protects an individual's right "to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection." However, it also guarantees the employees' right "to refrain from any or all such activities except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment..."²

There appears to be general mis-

understanding of exactly what the law requires with regard to employees' right to refrain from union activity. As evidence of this general misunderstanding, from October 1, 1986 to September 30, 1987, there were 64 cases processed by the Region 13 (Chicago Metro Region) National Labor Relations Board (NLRB) office involving Section 8(b)(2) allegations. However, only six of these cases involved allegations of compulsory unionism.³

It might also be argued that compulsory unionism renders the labor union undemocratic. That is, employees who are philosophically opposed to labor unions and do not wish to join are forced to do so. Further, in the case of the agency shop, although employees are not required to formally join the union, they are required to pay dues and fees. Thus, these employees support the union financially, but are not permitted to participate in union activities. They are not, for example, permitted to vote on ratification of the labor agreement to which they will be bound.⁴

From the employer's perspective, compulsory unionism serves only to strengthen the hand of the union and weaken the hand of management.

Employers Are Bound by Some Union Security Clauses

There are primarily five types of union security clauses: closed shop, union shop, maintenance of membership, agency shop and hiring-hall agreements. The specifics of these clauses include:

Closed shop. The closed shop is the strongest form of union security and is a clear example of compulsory unionism. This type of agreement requires union membership as a precondition of employment and continued member-

ship as a condition of maintaining employment. Denial of admission into the union or expulsion from the union results in a denial of employment for a job applicant or loss of employment for an incumbent.⁵ Essentially, therefore, the closed shop gives the union and the employer equal voices with regard to hiring or firing. The NLRA as amended by

the Taft-Hartley Act no longer permits the closed shop agreement.⁶ The mere existence of a closed shop contract as well as any discharges thereunder are unlawful under the NLRA.⁷

Union shop agreements. A union shop agreement requires employees to obtain union membership as a condition of retaining employment. Under

union shop agreements, employees are given a specific time frame (usually based on the date of hire), to obtain membership in the union.⁸ Unlike the closed shop, employees are not required to be members of the union as a precondition of employment. However, the NLRA imposes several requirements upon union shop agreements:

- The union's authority to enter into a union security agreement must not have been revoked in a valid deauthorization election.⁹


- Under a valid union shop agreement, an employee may not be required to join the union until at least 30 days after the date of hire.¹⁰ However, in the building and construction industry, union membership may be required after seven days from the date of hire.¹¹

- The union shop agreement is subject to any restrictions imposed under applicable state law. In other words, the union shop agreement is subject to any state right-to-work legislation.¹²

- Under a valid union shop agreement, an employee may be discharged for nonmembership only when: Membership is available to that employee on the terms and conditions generally applicable to other members, or: membership has been denied or terminated for nonpayment of regular dues or initiation fees required of other members of the union.¹³

A sample union shop agreement might be worded as follows: "The company agrees that it will not employ any individual who is not or does not within one month after his or her employment become and remain a member in good standing of the union. All present employees covered by this agreement who are not members of the union shall become and remain members in good standing within 30 days of the date of this agreement."¹⁴

Maintenance of membership agreements. A maintenance of membership agreement requires all members of the bargaining unit who are members of the union at a specified time (e.g., date of the labor agreement) or who later become members, to maintain their membership in the union for the dura-



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tion of the contract as a condition of continued employment.¹⁵ A typical maintenance of membership agreement contains an escape clause that permits employees who are union members at the time the agreement becomes effective to resign from the union within a specified period. The escape period is usually between 15 and 30 days after the contract takes effect.¹⁶

The maintenance of membership agreement is subject to some, but not all, of the restrictions that apply to union shop agreements. For example, the union must enjoy majority status before entering into a union shop agreement or a maintenance of membership agreement. On the other hand, because nonunion employees are not required to join the union under a maintenance of membership agreement, the statutory 30-day grace period, or the seven-day grace period in the building and construction industry, does not apply.¹⁷

It is important to point out that under Section 8(f) of the NLRA, unions in the building and construction industry are permitted to enter into union security agreements before their majority status has been established.¹⁸ A typical maintenance of membership agreement might read as follows: "Effective 15 days after signing this agreement, all employees are members of the union in good standing, and all employees who thereafter become members of the union, shall as a condition of employment, continue to remain members in good standing for the duration of this agreement."¹⁹

Agency shop agreements. An agency shop agreement requires all employees in the bargaining unit to pay regular dues and initiation fees to the union regardless of actual membership.²⁰ The agency shop agreement does not require actual membership in the labor union, only payment of regular dues and initiation fees. Therefore, this form of union security does not result in compulsory unionism. An example of a typical agency shop clause reads as follows: "While this contract is in force, as a condition of employment the company will deduct from the wages of each em-

ployee in the bargaining unit a union service charge not to exceed \$15 per month, and will forward the agreed amount of such deductions made each payroll date to the financial officer designated by the union, and one half of the amount will be deducted each payroll period."²¹

Hiring hall agreements. Because of uncertainty with regard to both the availability and tenure of employment in the construction industry, hiring hall and employment referral agreements are very common.²² Section 8(f) of the NLRA specifically authorizes the use of hiring hall agreements and employment referral agreements in the building and construction industry.²³ Although hiring hall agreements may benefit both employers and employees, it is also true

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that the union's control over hiring and employment referral may lead to abuses on the part of the union.²⁴ Specifically, these abusive practices can be tantamount to the unlawful closed shop if the union requires membership as a precondition of referring a worker for employment.²⁵ The most basic rule regarding unlawful hiring hall practices is operating in a manner that discriminates against nonunion applicants.²⁶ Also, any practice that gives preference to union members over nonmembers in making referrals is unlawful.²⁷ Thus, lawful hiring hall agreements and practices do not constitute compulsory unionism.

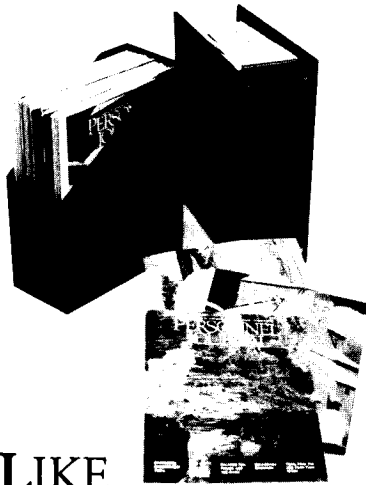
The type of union security clause that seems to generate the most confusion is the union shop clause. Both employees and employers assume that union shop clauses require employees to

become members of the union after some specified period. However, a careful examination of the law suggests another conclusion.

Section 8(a) (3) of the NLRA prohibits discrimination against employees with regard to terms and conditions of employment. It states: "No employer shall justify any discrimination against an employee for nonmembership in a labor organization, a) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members; or b) if he has reasonable grounds for believing that membership was denied or terminated for reasons *other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership.*"²⁸

Further, Section 8(b) (2) states "It shall be an unfair labor practice for a labor organization or its agent to cause or attempt to cause an employer to discriminate against an employee in violation of Section (a) (3) or to discriminate against an employee to whom membership in such an organization has been denied or terminated on some ground *other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership.*"²⁹

The key phrases in these two key sections are italicized. Although Section 8(a) (3) means that it is unlawful to have an agreement between an employer and a union that provides for compulsory membership in the union after 30 days from the date of hiring, it also means that the employer may not discriminate (i.e., discharge) against an employee pursuant to that agreement *except for nonpayment of dues and initiation fees.*³⁰ The only obligation that the employer or union can enforce against the individual employee under a union shop agreement is the obligation to pay dues and fees. Actual membership in the union cannot be required under the union shop contract.³¹ Thus, technically, the only reason a union can expel a member and an employer can



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terminate an employee is if the employee refuses to pay union dues and/or initiation fees. Employees cannot be discharged from employment for refusing to become a member of the union. Even under a union shop clause, if employees refuse membership in the union, but agree to pay dues and fees, their employment cannot be terminated, nor can the union discriminate against them in any manner.

Similarly, under a maintenance of membership agreement, an employee who resigns after the escape period has ended his or her obligation to pay dues to the union for the duration of the collective bargaining agreement. However, this obligation to pay union dues is the only enforceable obligation of the maintenance of membership agreement. As with the union shop agreement, Section 8(a)(3) and Section 8(b)(2) of the NLRA prohibits employer or union discrimination on the basis of non-membership in the union or for any reason other than nonpayment of dues and fees.³²

Employers Can Better Determine the Strength of the Union

There are some important implications of this interpretation of the law for employers, employees and unions. Because employees do not have to become members of the union, the true strength of the union is more evident. That is, employers can more readily determine whether the union continues to represent a majority of employees. Thus, employees who perceive that the union has lost its majority status might be more prone to file for decertification elections. Determining majority status could be more difficult if all employees, believing the law requires them to do so, join the union.

Another important advantage for employees is that they do not have to join unions when they are philosophically opposed to such membership. Although the law protects individuals' rights to join or refrain from joining unions, under the widespread belief that union shop clauses legally require employees to join unions, employees

who are opposed to such membership have fewer rights relative to those employees who are pro-union. The pro-union employee has the opportunity to exercise his or her right to form and join a union. However, the anti-union employee, by believing the union shop clause requires union membership, does not have the same freedom of choice. However, while not widely recognized, the law does provide employees just this right to refrain from joining.

Further, only union members are subject to union discipline.³³ For example, nonmembers cannot be disciplined by the union for crossing a union picket line during a strike. Another important potential benefit to employees philosophically opposed to union membership has to do with the requirement to pay periodic dues and initiation fees. The law requires nonunion employees subject to a union shop or agency shop agreement to pay these dues and fees uniformly as a condition of acquiring or retaining membership.³⁴ This refers only to payments used to meet the union's current and general obligations.³⁵ Periodic dues and initiation fees do not include payments for activities from which the employee who chooses not to join the union will not benefit. These include payments to a special strike support fund,³⁶ payments used to pay off a mortgage on the union hall,³⁷ union fines³⁸ or payments to a union benefit program (such as health insurance) for which nonmembers are not eligible.³⁹

If this interpretation of the law becomes widespread, the potential disadvantage to employers is a more cohesive, and perhaps aggressive, union. Although membership in the union may decline, those who remain union members are likely to be strongly pro-union. Thus, union members may become more cohesive and work harder to achieve their goals.

Other specific potential disadvantages to employers include:

- Union members are usually the only employees permitted to participate in a strike vote or contract ratification vote.⁴⁰ This means that only employees loyal to the union will decide whether a

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strike will occur or a contract offer by management will be accepted by the bargaining unit employees.

• Union members are generally the only employees permitted to participate in union elections.⁴¹ Therefore, the union officers and the union bargaining committee will be selected only by employees loyal to the union. The union's bargaining demands may reflect this more dedicated constituency.

Employers may wish to inform their employees of their rights under the law regarding compulsory union membership. However, managers should weigh carefully both the potential advantages and disadvantages of such a strategy. ■

Footnotes

1. 3 *Lab. L. Rep.* (CCH) par. 4510. March 14, 1986.
2. 29 U.S.C. sec. 157. 1982.
3. Personal communication, Donald Crawford, NLRB Regional Director, Region 13. November 3, 1987.
4. *NLRB vs. Hershey Foods*, 513 F. 2d 1083, 9th Cir. 1985.
5. 3 *Lab. L. Rep.* (CCH) par. 4520. May 14, 1985.
6. 29 U.S.C. sec. 158 (a) (3). 1982.
7. *Operating Engineers Local 542 vs. NLRB*, 329 F. 2d 512, 3d Cir. 1964.
8. 3 *Lab. L. Rep.* (CCH) par. 4520. May 14, 1985.
9. 29 U.S.C. sec. 158(a) (3). 1982.
10. 29 U.S.C. sec. 158(a) (3). 1982.
11. 29 U.S.C. sec. 158(f). 1982.
12. 29 U.S.C. sec. 164(b). 1982.
13. 29 U.S.C. sec. 158(a) (3). 1982.
14. *Commerce Clearing House, Labor Law Course*, par. 2742, 25th Ed. 1983.
15. 3 *Lab. L. Rep.* (CCH) par. 4510. May 14, 1985.
16. *Ibid.*
17. *International Union of Automobile Workers*, 142 NLRB 296. 1963.
18. 29 U.S.C. sec. 158(f). 1982.
19. 3 *Lab. L. Rep.* (CCH) par. 4520.30. May 14, 1985.
20. *NLRB vs. General Motors Corp.* 373 U.S. 734. 1963.
21. 3 *Lab. L. Rep.* (CCH) par. 4520.04. May 14, 1985.
22. Ross, "Origin of the Hiring Hall in Construction" 11 *Industrial and Labor Relations Review*, 366. 1972.
23. 29 U.S. sec. 158(f). 1982.
24. Senate Committee on Labor and Public Welfare, S. Rep. No. 1827, 81st Cong., 2d sess. pp. 12-13. 1950.
25. *Ibid.*
26. *Local 357 Teamsters vs. NLRB*, 365 U.S. 667. 1961.
27. *Local 441, IBEW*, 269 NLRB 664. 1984.
28. NLRA Section 8(a) (3). part. 6028.
29. NLRA Section 8(b) (2). part. 6033.
30. 29 U.S.C. sec. 158(a) (3). 1982.
31. *NLRB vs. General Motors Corp.*, 373, U.S. 734. 1963.
32. *Marlin Rockwell Corp.* 114 NLRB 553. 1955.
33. *NLRB vs. Textile Workers Local 1029*, 409 U.S. 213. 1972.
34. 29 U.S.C. sec. 158(a) (3). 1982.
35. *Painters' Local 1627*, 233 NLRB 174. 1977.
36. *NLRB vs. Die and Tool Makers Lodge 113*, 231 F. 2d 298, 7th Cir. 1956.
37. Feldacker, B.S., *Labor Guide to Labor Law*. Reston, VA: Reston Publishing Company, 1980, p. 238.
38. *Roofers Local 4*, 140 NLRB 384. 1962.
39. *Indiana Gas and Chemical Corp.*, 130 NLRB 1448. 1961.
40. *Local 1104, Communication Workers vs. NLRB* 520 F. 2d 411, 2d Cir. 1975.
41. *Ibid.*

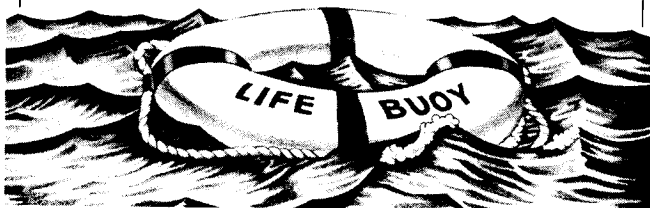
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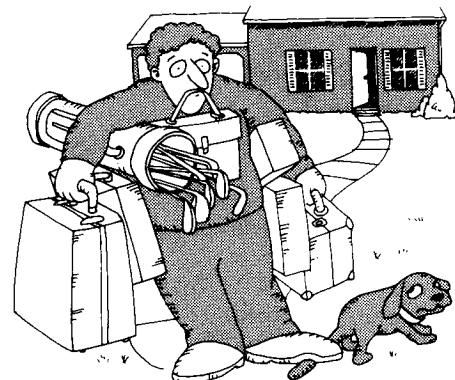
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