feits or imitations in the possession or under the control of any defendant in such case be delivered to an officer of the court, or to the complainant to be destroyed.

"Sec. 5. Every person who shall use or display the genuine label, trade mark, or form of advertisement of any such person, association or union, in any manner not authorized by such person, union or association, shall be deemed guilty of a misdemeanor, and shall be punished by imprisonment in the county jail not less than three months nor more than one year, or by a fine of not less than one hundred dollars nor more than two hundred dollars, or both. In all cases where such association or union is not incorporated, suits under this act may be commenced and prosecuted by any officer or member of such association or union on behalf of and for the use of such association or union.

"Sec. 6. Any person or persons who shall in any way use the name or seal of any such person, association or union, or officer thereof, in and about the sale of goods or otherwise, not being authorized to so use the same, shall be guilty of a misdemeanor, punishable by imprisonment in the county jail of not less than three months nor more than one year, or by fine of not less than one hundred dollars nor more than two hundred dollars, or both.

"Sec. 7. The fines provided for in this act may be enforced before a justice of the peace in all cases where the party complaining shall so elect, and in case of conviction before such justice of the peace the offender shall stand committed to the county jail until the fine and costs are fully paid, under the provisions of section 8, article IX of an act to revise the law in regard to criminal jurisprudence, in force July 1, 1874, or otherwise."

CAUSES OF THE OPEN SHOP POLICY.

BY JOHN R. COMMONS.

[John Rogers Commons, economist; born Darke county, O., October 13, 1862; graduated from Oberlin, 1888; A. M., 1890; student Johns Hopkins, 1888–90; professor sociology Oberlin college, 1892; Indiana university, 1893–95; Syracuse university, 1895–99; expert agent industrial commission, 1902; assistant secretary National Civic Federation, 1903; professor of sociology, University of Wisconsin. Author: The Distribution of Wealth; Social Reform and the Church; Proportional Representation, etc.]

The open shop controversy, in its extreme form, is peculiar to America. The British labor delegates, in 1902, were surprised to see the bitterness of the American unionist toward the scab. This feeling has its roots in conditions and history peculiar to this country. For three generations the American workingman has been taught that the nation was deeply concerned in maintaining for him a high standard of living. Free traders objected that manufacturers would not pay higher wages, even if protected. Horace Greeley, who, as much as any other man, commended the American system to wage earners, admitted the force of the objection, but he held that socialism, or, as he called it, association, would share the benefits of the tariff with them. But this must come through the workmen themselves. Some of them tried it. The communistic experiments failed. They tried co-operation, education, politics. Neither did these seem to reach the high aims of protection. Meanwhile they were discovering the power of the strike. By this kind of association those who could hold together found themselves actually sharing the benefits of protection which Greeley mistakenly predicted for his fantastic kind of association.

But the gains from strikes were temporary. The federal laws which protected manufacturers against the products of foreign labor, permitted them to import the foreigners themselves. In many cases strikes were defeated by the immigrants, and in many more cases the immigrants went into the shops to share the gains won by the strikers, or gradually to displace them with their lower standards of living. With

a unanimity never before shown the unions entered the political field and got the Chinese exclusion acts and the alien contract labor laws. These theoretically rounded out the tariff system, and they somewhat lessened the pressure on the skilled trades. But the amount of immigration itself was not lessened. Rather have the laws been evaded and the influx has swollen greater than before, while the sources have shifted to still lower standards of life. By a minute division of labor and nearly automatic machinery unknown in any other country, the skilled trades were split into simple operations and places created for the unskilled immigrants. The strike thus seemed likely to lose permanent results. The unions were unable in politics further to check immigration. Endorsing the tariff on products as a necessary first step they were left to enact their own tariff on labor. The sympathies of the American public were with them, but these sympathies, lacking the historical sense, have recently somewhat declined, when it is found that the union theory is that of protection and not that of free trade. The British unions are protected by long periods of apprenticeship. The nonunionist is only another Englishman who can be talked to, and whose class feelings are strong and identical with those of the unionist. The employers are not protected by a tariff, neither have they imported foreign workmen. Division of labor is not minute, and the skilled workman is not directly menaced by the unskilled. But the American unions have very little industrial or racial protection. Apprenticeship is gone, except as enforced by them against the protests of employers. In order to enforce this and other measures needed to keep wages above the market rate, the unions found themselves compelled to enforce the rule that no one should enter the shop except through the union. Without this rule their efforts were nullified.

It naturally is objected that, in comparing the closed shop with the tariff, a corollary cannot be drawn from the laws enacted by government to the rules imposed by a union. The presumption is in favor of free trade, and only the sovereign power has the right to interfere, and that in the general interest. Where private associations restrict competition the

act becomes conspiracy. But here the unions found that public sympathy and judicial decision have made an exception in their favor. While a combination to put up prices is illegal, a combination to put up wages was gradually relieved of legal penalty. It was felt that the laborer was the weaker party to the bargain; that the same public policy which would keep down prices to the level of domestic competition, would encourage the laborer to keep wages above the level of immigrant competition. Capital could take care of itself, and the capitalist who failed in competition would only drop into the ranks of wage earners, but the laborer who failed had no place lower to drop. Consequently, while, on the one hand, the doctrine of protection to manufactures was gaining hold, on the other hand its corollary, the exemption of labor from the conspiracy laws, was being established.

Some decisions went even further. Granting that it is not criminal conspiracy to quit work in a body in order to benefit their own members, it is not easy to draw the line at quitting work in a body to secure the discharge of a foreman or a nonunionist whose acts are injurious to the members. Though the decisions here are conflicting, yet there were early decisions sustaining this right, and so essential is it to their existence and so persistently have the unions asserted it, that, amidst conflicting decisions, many have established the union shop. Here the logic of politics has been with them, and the politicians have been more consistent than the manufacturers, for the high wages to which protection campaigners point, are usually wages kept high by a closed shop policy. Even the wages in unprotected industries like the building trades, which depend mainly on the closed shop, are offered as evidence of protection's benefits, while in the protected industries it is the closed shop wages of tin plate workers, molders, blacksmiths, etc., and not the open shop wage of woolen and cotton textiles, to which attention is directed.

A curious flank movement has taken place in the use of the terms closed and open shop. As the unions originally employed the terms, a closed shop was one which was boycotted or on strike, and in which consequently the union forbade its members to work. An open shop was one where

union men were permitted by the union to get employment if they could. To declare a shop open was equivalent to calling off a strike and boycott. The terms as now defined are different. The closed shop, instead of being nonunion, is the union shop. And the open shop is declared open by the employer to admit nonunionists, and not by the union to unionists.

Yet, even from this new standpoint, the terms are not clearly distinguished. Many employers have what they call open shops, and yet they employ only union men. The union would say that these are union shops, whereas the public generally would call them closed.

The confusion arises from different points of view. The employer has in mind the contract or trade agreement with the union. He looks at it from the legal or contractual side. The union has in mind the actual situation in the shop. They look at it from the side of practical results. The agreements made in the stove industry, in bituminous coal mining, in three fourths of the team driving agreements, in railway machine shops, and many others, are plainly open shop agreements, where it is often even stipulated that the employer has the right to employ and discharge whomsoever he sees fit, only reserving that he shall not discriminate on account of union membership or union activity. Many agreements are silent on the question of employment and discharge, and in such cases the presumption is in favor of the employer's freedom in selecting his men.

It is evident that with these different points of view it is difficult to reach an understanding. Clearness would be promoted by adopting a use of terms which would bring out the above distinctions as they are found in practice. In doing so, the closed shop would be viewed from the side of the contract, and would be designated as one which is closed against the nonunionist by a formal agreement with the union; the open shop as one, where, as far as the agreement is concerned, the employer is free to hire union or nonunion men; the union shop as one where, irrespective of the agreement, the employer, as a matter of fact, has only union men. Thus an open shop, according to agreement, might in practice be a

union shop, a mixed shop, or even a nonunion shop. The closed shop would, of course, be a union shop, but the union shop might be either closed or open.

The contention of some union defenders that the term closed shop is a misnomer, I do not agree with, if its use is limited as here proposed. They say it is not closed, because any competent man can get into it by joining the union. What they really mean is that the union is an open union, but this is another question, and an important one. Much can be said for a closed shop if the union is open, but a closed shop with a closed union cannot be defended. The use of terms above proposed makes it possible to draw these essential distinctions and to discuss each separate question of fact by itself and on its merits.

The historical steps were somewhat as follows: First, the union got the union shop by quitting work, or threatening to quit, in a body. Next they got the closed shop by a contract with the employer. If the employer would not make a closed shop agreement, they either retained their original right to quit if he hired a nonunionist, or their open shop agreement provided for negotiation whenever a nonunionist became obnoxious. In this way the open shop agreement might mean, in individual cases, the union shop in practice.

Now the significant fact respecting the agreements just mentioned in the coal, stove foundry, railway shops and other industries, is that, while they are open shop agreements, they are, on the whole, satisfactory to unions which in other branches of their work are most uncompromising for the closed shop. In all cases their satisfaction is based on three or four considerations. In the first place, the agreement is made, not with each shop, but with an association of employers, including the strongest competitors in the industry. It is to the interest of such an association to require all of its members faithfully to observe the agreement, because it places them all on the same competitive level as far as wages are concerned. The employer who would violate the agreement would get an advantage over the others in the largest item of his expenses. This the others, in self interest, cannot permit, and consequently as long as he is a member of the

employers' association, the union is relieved of the burden of enforcing the agreement, and the employers themselves, as a body, assume the responsibility of doing what the union could do only by means of the closed shop or the strike. If the employer persists in violating the agreement, after his association has exhausted its powers of discipline, he is expelled, and then, being no longer protected by his fellow employers, he is left to the tactics of the union.

In the second place, the agreement is made, not only for members of the union, but for all positions of the same grade, whether filled by union or by nonunion men. No employer, therefore, can get an advantage, in lower wages or longer hours, by hiring a nonunionist. No amount of protest or solemnity of promise, and, especially, no appeal to the Declaration of Independence from those protected by a tariff that violates the Declaration, can persuade the unions that the employer wants the open shop except to get his labor below the union rate. Some employers and some associations of employers, as in the machinery line and in iron and steel, have been frank enough to admit this, when they insist that their agreement with the union covers only union men, and that they are free to make a lower scale of wages for nonunion men. But, as a rule, an agreement cannot stand for long on such an understanding, and very soon it goes to pieces in a strike for the closed shop or the dissolution of the union. There have been isolated exceptions where the union is strong, and thinks that the nonunionist, in order to get the higher rate of pay, will join the union. But, in general, only when the agreement covers the nonunionist as well as the unionist, and when the employers show that they have the power and the will to enforce it, can the union consent to the open shop. Even this takes time, for power and good will are shown only through experience, and the workmen have undergone many bitter experiences of dishonesty, and many more experiences of inability, through the pressure of competition or changes in management, to live up to agreements honestly made. The stove founders, the soft coal operators, and others, after several years of associated action, seem to have won confidence in their ability and honesty of

purpose in enforcing their open shop agreements, and for this reason, the unions, though not entirely satisfied, are not driven by their more radical members to demand the closed shop.

In the third place, that clause of the agreement which provides for the so-called arbitration of grievances covers all matters of discrimination as well as all matters of wages, hours and rules of work. By discrimination is meant all questions of hiring, discharging and disciplining both union and nonunion men. In this respect it seems to me a mistake was made by the anthracite coal strike commission in its award as interpreted by the umpire, Colonel Wright. The commission had awarded that no person should be discriminated against on account of membership or nonmembership in any labor organization, and had provided a board of conciliation and an umpire to decide any disagreement that should not be settled by the parties concerned. Under this clause the umpire stated the principle involved as follows: A man has the right to quit the service of his employer whenever he sees fit, with or without giving a cause and the employer has a perfect right to employ and discharge men in accordance with the condition of his industry; he is not obliged to give a cause for his discharge.

The mistake in applying this principle of reciprocal rights lies in the fact that the union, under the agreement, had given up its right to strike. Having done so, it gives up its right to protect a member against discrimination or unjust discharge. In lieu of settling such a grievance by a strike the agreement sets up a tribunal to investigate and decide according to the facts. Of course, individuals retain their right to quit, and the employer retains his right to discharge, yet since the union has abandoned its right to strike, in view of the tribunal, the employer must be held to have abandoned his right to discharge a union man whenever the union alleges a grievance and appeals to the board. The employer always claims that discrimination was not intended, but this is a question of fact to be determined by the tribunal. Otherwise the most vital injury, one that concerns the very life of the union, is taken out of the hands of the board of concilia-

tion and falls back upon the original remedy of the union—the strike. This is well understood in all trade agreements except the peculiar one in the anthracite coal industry. Every grievance or alleged grievance in the hiring or discharging of union or nonunion men is taken up by the officers of the two associations and settled on its merits, under the terms of the agreement. Under no other condition could the union be assured against discrimination or unjust discharge; which is but another way of saying, under no other condition could it trust itself to an open shop agreement. With this protection, the case of each nonunion man can be taken up in conference by the officers of the two associations, and he can be disciplined the same as a union man for any acts injurious to the members of the union or menacing to the agreement.

These three conditions, I think, have been found essential in most open shop agreements that have lasted for any length of time: namely, a strong and well disposed association on each side; the same scale of work and wages for unionist and nonunionist; and the reference of all unsettled complaints against either unionist or nonunionist to a joint conference of the officers of the union and the association.

In describing these conditions I have indicated, conversely, certain conditions under which the union is forced in self protection to stand for the closed shop. Such cases are those where there is no employers' association, or where the employers' association cannot control all of its members or all of the industry, or where the association is hostile or has a menacing, hostile element within it; as, for example, when it does not insist that its nonunion or open shop members shall pay the union scale. In these cases the maintenance of the scale and the life of the union depend on maintaining the union shop. Whether it shall be a closed shop or not, i.e., whether it shall be unionized by a contract in which the employer binds himself to employ only union men, and becomes, as it were, a union organizer, or whether, as far as the trade agreement is concerned, it shall be an open shop, depends on circumstances, and the same union will be found practicing both methods, according to the locality or shop.

The closed shop contract has recently been attacked in the courts, and in some cases overthrown, on the ground of illegality. Without branching into that side of the question, it should be noted in passing that such a contract usually carries a consideration. If the union has a label protected by law, this is a valuable consideration which the employer cannot be expected to enjoy unless he agrees to employ only union men, and consequently all label agreements of the garment workers, brewery workers, boot and shoe workers, and others, are closed shop agreements. However, the main consideration to the employer is the enlistment of a responsible national authority on the part of the union to compel the local union or shop to fulfill its side of the agreement. The local union is moved by personal feelings, but the national officers have wider responsibilities and a more permanent interest in living close to the letter and the spirit of the agreements. This is the consideration distinctly stated in the agreements of the typographical union with the newspaper publishers' association, several of whose members have nonunion or open shops, it being agreed that the national union will underwrite every closed shop agreement made by a publisher with a local union. The same consideration is found in the longshoremen's agreements, in all label agreements, and though not always expressly stipulated, it is understood to exist, more or less, in all agreements whether actually underwritten by the national officers or not. If the employer wishes the national union to be responsible for its local members he logically will agree to employ only members of the union. The open shop, by the very terms of the contract, leaves it to the employer to enforce the agreement by hiring nonunion men, but the closed shop makes the national union responsible by requiring it to discipline the local union or even to furnish other union men. It is this consideration, more than anything else, that has led the stove founders and other employers' associations, under open shop agreements, to watch without protest the gradual unionizing of nine tenths of their shops.

There is no doubt that the object which all unions aim to reach is the complete unionizing of the trade. In support

of this there are two kinds of arguments, one of which I should call sentimental, the other economic or essential. Certain of the economic arguments I have just indicated. But there are some places where these do not apply; and a union which relies solely on a sentimental argument cannot win the support of the public, which eventually makes the laws and guides the decisions. This sentimental argument holds that he who is benefited should bear his share of the expenses of the benefactor. The union which raises wages and shortens hours should be supported by all whose wages and hours are bettered, and the nonunionist, because he refuses support, should be shut out from employment.

An argument like this, if not backed by an evident necessity, falls under attack. Such is the case in government and municipal employment. The government fixes a scale of wages. In the United States this scale is considerably above the scale in similar private employment. Trade unions have doubtless taken the lead in establishing these favorable conditions, but they really depend, not on the unions, but on politics. They are the natural outcome of universal suffrage, and are not found to the same extent in countries or localities where the labor vote is weak or labor is newly enfranchised. Formerly the political party filled such positions with its partisans. The situation is no worse when the union fills them with its members. But competitive civil service, or civil service reform, is an advance on both partisanship and unionism. Government pays the scale to all alike. There is no competition of outsiders to force it down. The state can be a model employer because its products do not compete on the market. The nonunionist or the aggressive employer is not a menace to the wages of government employees. If the government should let out its work to the lowest bidder the union then could maintain a scale only by the union shop. But when the government hires its own workmen the union shop is not needed. A strike would be absurd, and the appeal for fair wages must be made to the people at large, through their representatives. The appeal is ethical and political, and not to the judgment of a strike, and

such an appeal is stronger when free from the onus of an exclusive privilege.

This is not saying that government employees should not be organized. In fact, the highest form of civil service in a nation committed to representative democracy is that where the public employees are organized in a union, so that all grievances can be taken up by their agents and arbitrated with the head of the department. This was demonstrated by Colonel Waring in the street cleaning department of New York, and he showed that only by requiring his employees to join in a union could partisan politics be wholly shut out and the highest efficiency secured. But this sort of unionizing depends on a favorable administration and an enlightened public opinion, and not on the strike or the closed shop.

There is a class of private employment similar to that of government employment in the conditions which make the closed shop unnecessary. This is railway transportation. A railway company establishes a scale of wages for its higher classes of employees. This scale is uniform over its system, is paid to all alike, and is not nibbled down by dickers with individuals. When the railway brotherhoods accept such a scale, they know that it will be paid to nonunionist as well as unionist. Therefore they do not even ask that it be kept in the form of an agreement, but are content that it simply be issued as a general order from the manager. They probably would take a different view if the company let out the hiring of employees to the lowest bidder among competing contractors, or even if they themselves tried to maintain a scale for section hands who are not protected by a long line of promotion. They certainly would refuse to work with a nonmember to whom the company insisted on paying lower wages than the scale. The closed shop policy on the railroads could be supported only by the sentimental argument, and the railway brotherhoods have recognized its futility when not backed by the economic argument. It is most significant that the agreements of the machinists' union for railway shops are likewise open shop agreements, similar to the brotherhood agreements, issued as a scale of wages by general order for the entire system and making no mention of the union. This

is also true of the machinists in government navy yards and arsenals, where the union has won several advantages for members and nonmembers alike. This is the union which, in general manufacturing, outside railway and government work, has been most bitterly assailed for its closed shop principles, but it is evident, from the contrast, that these principles have been forced upon the union by the different character of the industry and the different attitude of employers.

The situation is different with street railways. Some of these companies are conducted on a large scale like interstate roads, and the unions are safe with an open shop agreement. Others are conducted like shops, and the street railway union seeks closed agreements, and has been known in a few cases to go on strike against nonunion men. This union is entirely different from the brotherhoods in that it admits to membership every employee of the company, including even the car cleaners, excepting only those who already belong to an old line trade union. Its motormen and conductors are not protected by a long period of apprenticeship or slow line of promotion, like the locomotive engineers and railway conductors, and consequently their places can be filled by men fresh from the farm or from any other occupation or profession. In fact the union contains ex-lawyers, ex-ministers, college graduates, and a variety of ex-talent that is unique. To them, therefore, the closed shop is often essential, and to the companies also it is an advantage, for the international union then guarantees the local contract.

The sentimental argument, of which I spoke as applied to government work, sometimes becomes more than sentimental when applied to private employment, even where the nonunionist gets the same pay as the unionist. There are always selfish and shortsighted members in a union. If they see a nonunionist enjoying the same privileges with themselves without the expense of union dues, and especially if the foreman shows a preference for the nonunionist, they too demand exemption from union burdens. Thus the union disintegrates, and a cut in wages or stretch in hours cannot be warded off. Experience is a hard teacher and has taught

this lesson thoroughly. It is not a mistake that the persistent nonunionist in private employment should be looked upon generally as a menace.

Another fact regarding this sentiment is often overlooked. Being compelled to work together and help one another in the same shop, men's feelings toward each other are personal and intense. The employer in his office need never see the competitor whom he is trying to crush, and only their products meet on the market. He scarcely can understand that his workmen in the shop are also competitors, but, in addition, are under enforced personal contact, and their sentiments cannot be kept down. What to him is business seems malice in them. Yet these feelings are really a factor in his cost of production, as much as the coal under the boiler or the oil on the bearings. It is not surprising that the open shop, even from the employers' standpoint, is not permanently practicable, and tends to become either union or nonunion.

It would be possible to run down the entire list of unions, and to show in each case the industrial circumstances which make the union, or closed shop necessary or unnecessary from the standpoint of maintaining wages. Wherever there is a large number of small contractors, as in the building trades or the clothing industry, an open shop union cannot survive. The building trades in London though less effective on wages than American unions, are nevertheless safe with their open shop agreements, because, in addition to the fact that the unions are not compelled to protect the common labor working with them, the master builder does not sublet his work, but has his own large establishment and permanent force, and hires all the trades directly. He takes up all grievances when they arise, including the grievance of the nonunionist. But in the United States the master builder has usually only an office force. He sublets all but the mason work to ten or thirty different contractors. These contractors often require little or no capital, and a mechanic to-day may be a contractor to-morrow. A nonunion contractor, with his lower wages and imported labor, would soon drive the union contractor out of business. The building trades are there-

fore compelled to put their closed shop policy foremost, and where they have been defeated in this policy, as in Chicago in 1900, they soon have regained all they lost of the union shop, even though working under explicit open shop agreements.

In the clothing trades, the sweatshop is simply the open shop; for the sweatshop is the small contractor with fresh immigrants, long hours and minute division of labor, crowding into the market and underselling the shops where wages, hours and conditions are better. Such would unquestionably have been the outcome in the building trades had the unions not been able to enforce the closed shop. No amount of good will on the part of clothing manufacturers or master builders could stand a market menaced with the product of open shops. It was through the open shop that the American born tailor was displaced by the Irish and German tailor; that the Irish and German were displaced by the Jew and by Polish women; and that the Jew is now being displaced by the Italian. In the building trades the Irish, German and American have stopped this displacement by means of the closed shop. The Jew is vainly trying to stop it, and the Scandinavian in Chicago until recently had stopped it in one branch of the clothing trade. Each displacement has substituted a race with a lower standard of living. As soon as a race begins to be Americanized and to demand a higher standard, another still lower standard comes in through the open shop. This is the history of many American industries. Whether the conditions in the clothing trade are preferable, for the American nation, than conditions in the building trades, is a question open for differences of opinion. The difference, however, is not apparent among the workmen in those trades. The immigrant, the manufacturer, the consumer, may hold a different view, but if so, it should be understood that the question in dispute is that of the wages of those workmen. As things are, the union shop or closed shop is the wage earners' necessary means to that end.

It is sometimes asserted that American unions, like the British unions, should place more reliance on reserve funds, benefit and insurance features, and that, with these attrac-

tions they would not have been compelled to put forward so strongly the closed shop policy. The British workman joins the union at the close of his long period of apprenticeship, and his motive is not the coercion of the closed shop, but rather insurance against sickness, death, loss of tools and out of work. His union is like the American railway brotherhoods which also rely on insurance and previous promotion. But the American unions do not have this period of apprenticeship to work upon, except as they have established it by the union shop. They are confronted by foreigners in language, modes of thought and standards of living, pressed on by necessities in a strange country, and eligible without previous training on account of minute division of labor. Should American unions wait slowly to build up their organization on the open shop and insurance benefit policies, they would be displaced by foreigners before they could get a start. The foreigners again would have to set up the union shop as soon as they in turn began to demand better conditions and were confronted by a new race of immigrants. This is exactly what they have done, and the union or closed shop in America is necessary to support those very insurance and benefit features which are proposed as a substitute for it.

That there are many serious problems springing from labor unions is evident. But they would properly be discussed under other headings. The present discussion is not merely of their good or bad methods—it is of their existence and their power to raise wages. Under a different order of industry or a socialistic policy of government unions might be superfluous. Their existence and their methods arise from the nature of the industry and the attitude of employers. A method necessary in the building trades or coal mines may be superfluous on the railroads. Their methods also arise from the universal human struggle for power. No institution or individual can be trusted with absolute power. Constitutional government is a device of checks and balances. Employers' associations are just as necessary to restrain labor unions, and labor unions to restrain employers' associations, as two houses of congress, a Supreme court, a president and political parties, to restrain social classes. Progress does not

come when one association destroys the other, but when one association destroys the excesses of the other. This kind of progress is going on in the several industries mentioned above. There the open shop question has never been even considered or mentioned, or else in course of time it has become only an academic question, because the employers' association takes up and remedies every real grievance or disproves every fictitious grievance that provoked the union into existence, and does not permit any of its members to smash or undermine the union. The bad methods of the union are gradually reduced by discussion backed by the power of organization, and its good methods are encouraged. Education improves both parties; mutual respect succeeds suspicion. In those industries it is accepted that protection to capital carries with it protection to labor; that fair profits imply fair wages; that well disposed associations on each side shall together discipline the nonunionist the same as the unionist; that the employers, having lost despotic control of their labor, regain a nobler control through co-operation with the union; that the opposition to nonunionists is not based alone on sentiment or malice, but on economic necessity; and that a question, which only stirs up class hatred in the field of pronunciamentoes and abstract rights, works out a peaceable solution when men acknowledge mutual rights.

THE LAW AND THE CLOSED SHOP CONTRACT.

BY WALTER DREW.

[Walter Drew, lawyer; born Williamstown, Mich., September 13, 1873; graduate of literary and law departments of University of Michigan; instrumental in organization of employers and business men in Citizens' Alliances first of Grand Rapids and later of Bay City, Saginaw and Muskegon; as manager of employers' campaigns during strikes he has had prominent part in labor troubles in Michigan.]

A closed shop may be defined as a shop in which none but members of a certain union or unions can secure employment. Shop is a general term for any business requiring the employment of labor. A closed shop in itself is a mere condition, and cannot properly be spoken of as lawful or unlawful. The law, however,will look to the active forces by which the condition known as the closed shop is brought about or maintained and will determine if those forces in their purposes or workings be lawful or unlawful.

A closed shop contract is a contract the immediate purpose of which is to secure or maintain the condition known as a closed shop.

Such contracts are susceptible of division into several classes according to the parties to them.

(1) Contracts among the several members of a union in which they agree not to work in a shop where nonunion men are employed. These contracts are usually in the form of by-laws.

(2) Contracts between a union and an employer by which none but members of the union are to be employed in the employer's shop.

(3) Contracts between a proprietor and a contractor by which the contractor is to employ none but union labor upon work to be done for the proprietor.

Such contracts may also be classified as public and private. A public closed shop contract is one which a public corporation, such as a city, county, or board of education is a