

ONE-SIDED COMPULSION

BY HENRY HAZLITT



If Section 14(B) of the Taft-Hartley Act is repealed, it will be at least partly because most of the proponents of state right-to-work laws have been too timid. They have compromised their own principle. They have not fought compulsory unionism consistently. They have merely pleaded for the right of states to be allowed to enact or retain laws forbidding compulsory unionism. But they have tacitly accepted the Federal Taft-Hartley Act's explicit sanction of compulsory unionism.

This sanction flatly contradicts other provisions of the Taft-Hartley Act. In fact, it contradicts the professed purpose of the act. For the Taft-Hartley law makes it "an unfair labor practice for an employer . . . by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization."

As Prof. Sylvester Petro has written in his book "Power Unlimited" (1959):

"The fundamental principle of the Taft-Hartley Act is the principle of free employee choice. Employees are expressly declared to have the right to join or not to join unions, free of economic or physical coercion by either employers or trade unions. Naturally, all forms of compulsory unionism are inconsistent with that principle. If a man must join a union in order to hold his job, he is being subjected to the kind of economic coercion which the act generally makes an unfair practice. Yet, compromising this fundamental principle, Congress explicitly permitted unions to impose union-shop contracts upon employers and employees, at least in states where such contracts were not prohibited. From that compromise, together with the denial of direct access to the courts, the lethargy of the NLRB, and the Supreme Court's pre-emption theory, all the abuses associated with the nationwide prevalence of compulsory-unionism conditions have developed."

It follows that if Section 14(B) is now repealed, the opponents of compulsory unionism, instead of merely pleading for its restoration, should take the offensive and launch a campaign for repeal of the clause in Sec-

tion 8(A3) in the Taft-Hartley Act which sanctions agreements imposing compulsory union membership as a condition of employment.

If the opponents of compulsory unionism take this course, they will be adhering to their principle consistently. They have weakened their position by accepting this clause and fighting a mere rear-guard action to keep in the act the 14(B) provision that implies the dubious doctrine of pre-emption. "A proper reading of the U.S. Constitution," as Petro writes, "would suggest that the power of the states to prohibit all forms of compulsory unionism does not depend upon a specific grant by the Federal legislature. That power is, rather, inherent in the sovereign power of the states to protect their citizens from corrupt and criminal abuse."

FREEDOM OF CONTRACT

Those government and union officials who want to repeal Section 14(B) on the ground of "freedom of contract" are insincerely using an argument that may boomerang on them. The principle of freedom of contract, they contend, requires that union membership as a basis of continued employment should be neither required nor forbidden by law. But if the principle does require that, it equally requires that *non-union* membership as a basis of employment should be neither required nor forbidden by law. Yet every union official insists on retaining the Taft-Hartley prohibition of the "yellow-dog" contract—a contract under which a worker agrees as a condition of employment that he will *not* join a union.

If union leaders insist on and get a completely one-sided law, which prohibits compulsory non-unionism while imposing compulsory unionism, they will arouse demands for the entire repeal of that law, and a restoration of the two-sided "freedom of contract" that prevailed before the Wagner Act of 1935, of which the Taft-Hartley Act of 1947 was an amendment.

Those who do not want such a restoration must in consistency agree to outlaw compulsory unionism everywhere as well as compulsory non-unionism.