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IN THE  
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 27

AMERICAN FEDERATION OF LABOR, ARIZONA STATE FEDERATION OF LABOR,  
PHOENIX BUILDING AND CONSTRUCTION TRADES COUNCIL, ET AL.,  
*Appellants,*

*vs.*

AMERICAN SASH & DOOR COMPANY, D. A. BREWER, W. B. STEVENS, ET AL.

No. 47

LINCOLN FEDERAL LABOR UNION NO. 19129, AMERICAN FEDERATION OF  
LABOR, NEBRASKA STATE FEDERATION OF LABOR, ET AL.,  
*Appellants,*

*vs.*

NORTHWESTERN IRON AND METAL COMPANY, DAN GIEBELHOUSE, STATE  
OF NEBRASKA AND NEBRASKA SMALL BUSINESS MEN'S ASSOCIATION

No. 34

GEORGE WHITAKER, A. M. DEBRUHL, T. G. EMBLER, ET AL.,  
*Appellants,*

*vs.*

STATE OF NORTH CAROLINA

**ECONOMIC BRIEF OF APPELLANTS**

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**THE CLOSED SHOP  
AND  
UNION SECURITY**

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**ECONOMIC BRIEF  
of the  
AMERICAN FEDERATION OF LABOR**

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**1947**



self-organization. This device was effectively used both in the initial stages of union organization and after the union has been formed and a contract entered into. If the employer's discriminatory actions were not successful in thwarting union organization in the beginning, he often succeeded in undermining the union even after a contract had been entered into by discharging those active in the union's affairs.<sup>51</sup> A union shop agreement which precludes such discharges is the only effective voluntary means of defense against such attempt to undermine union organization by unfair discrimination.

The union shop is necessary and justified on the principle of protection alone. The late Clarence Darrow regarded the acceptance of this principle as being of compelling importance, stating:

"The closed shops are the only sure protection for the trade agreements and for the defense of the individual \* \* \* The closed shop is the only means that experience has shown to be essential to protect the liberty workingmen have already won."<sup>52</sup>

Professor Lionel Edie, in his appraisal of the place the closed shop should properly occupy in our industrial life, stresses the basic necessity of the closed shop as an instrument of protection. Professor Edie states his view in the light of the judgment of Mr. Justice Frankfurter, expressed after his service as chairman of the National War Labor Policies Board in the First World War:

"Labor resorts to the closed shop in response to the basic human desires for self-protection, because the

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<sup>51</sup> See testimony of William Green, President, American Federation of Labor, on the Wagner Labor Relations Bill (S. 1958), March 14, 1935, *Hearings Before the Committee on Education and Labor*, U. S. Senate, 74th Congress, 1st Session, on S. 1958, Part I, pp. 104 ff.

<sup>52</sup> "Why Men Fight for the Closed Shop," by Clarence Darrow, *American Magazine*, Vol. LXXII, p. 550.

As an institution, the union must incur expenses in rendering its services. Its officers must be maintained, it must have quarters and provide means of communication with employees, with the employer and with the public. It is necessary for the unions to keep its own records and to have access to information with regard to changing conditions in related employment or similar establishments. In order to provide the most effective benefits to the employees it represents and to make its negotiations responsive to the problems faced by the management, the union has to conduct studies and engage in research. It must concern itself with the standards of pay and work maintained elsewhere in the industry and trade and with activities of other organizations to sustain such standards. And it may find it necessary to deal, on behalf of the workers it represents, in such civic matters related to their employment as health, housing and the welfare of their community.

All of these services are rendered by most unions. All unions render most of them. Every employee under the union agreement, whether member or non-member, benefits from such services. And all employees have an obligation to sustain them.

As stated by Samuel Gompers, "Like all others in society, persons who are desirous of becoming beneficiaries of an agreement should bear the equal responsibility which such an agreement involved."<sup>68</sup> As Gompers pointed out on another occasion, a nonunionist in the midst of a fight for the betterment of working conditions has "no moral right to withhold his assistance in such a fight for bare justice."<sup>69</sup> In the words of Clarence Darrow, union men

<sup>68</sup> "Talks on Labor" by Samuel Gompers, *American Federationist*, Vol. XII (1905), p. 221.

<sup>69</sup> *Labor and the Employers*, by Samuel Gompers, New York, 1920, p. 112.

"refuse to work with those whose weakness or stupidity make them unfaithful to their class."<sup>70</sup>

The principle that "he who is benefited should bear his share of the expenses of the benefactors"<sup>71</sup> is fundamental to unionists. The principle is based not on sentiment but on justice. As pointed out by Professor Robert R. R. Brooks, the motive behind the union insistence on the closed shop is "the desire to prevent a minority of non-union 'chiselers' from securing, free of charge, the advantages for which union members have paid."<sup>72</sup>

But labor's insistence is not merely on financial contributions from the would-be "free riders." The union properly insists also on moral support and active cooperation as evidenced by union membership of everyone in the shop which the union represents.

As Rev. Dr. Toner sums up the issue:

"Closely related to this aspect of the closed shop is its function in contributing to an increase in responsibility. Since under collective bargaining the wages, hours, and conditions of work are negotiated and agreed upon by the employer and the union, and since the enforcement of agreements is generally left to the union, it is essential that the union have authority over all the employees to whom the contract applies."<sup>73</sup>

And as Dr. Toner concludes, after a searching study of all available evidence:

"The closed shop provides the greatest possible opportunity for co-operation because it at least nominally unites the workers of a craft or industry

<sup>70</sup> "Why Men Fight for the Closed Shop," by Clarence Darrow, *American Magazine*, Vol. LXXII (1911), p. 551.

<sup>71</sup> "Causes of the Open Shop Policy," by John R. Commons, in *The Making of America*, Vol. VIII (1905), p. 212.

<sup>72</sup> *Unions of Their Own Choosing*, by Robert R. R. Brooks, p. 156.

<sup>73</sup> Toner, *op. cit.*, p. 157.