

# Washington University Law Review

---

Volume 28 | Issue 3

---

January 1943

## Reviews of “Collective Bargaining Systems,” By Frank Pierson and “The Closed Shop,” By Jerome Toner

John R. Stockham

*Stockham, Roth, Bader & Martin*

Follow this and additional works at: [https://openscholarship.wustl.edu/law\\_lawreview](https://openscholarship.wustl.edu/law_lawreview)



Part of the [Law Commons](#)

---

### Recommended Citation

John R. Stockham, *Reviews of “Collective Bargaining Systems,” By Frank Pierson and “The Closed Shop,” By Jerome Toner*, 28 WASH. U. L. Q. 186 (1943).

Available at: [https://openscholarship.wustl.edu/law\\_lawreview/vol28/iss3/3](https://openscholarship.wustl.edu/law_lawreview/vol28/iss3/3)

This Book Review is brought to you for free and open access by the Law School at Washington University Open Scholarship. It has been accepted for inclusion in Washington University Law Review by an authorized administrator of Washington University Open Scholarship. For more information, please contact [digital@wumail.wustl.edu](mailto:digital@wumail.wustl.edu).

## BOOK REVIEWS

**COLLECTIVE BARGAINING SYSTEMS.** By Frank C. Pierson. Washington, D. C.: American Council on Public Affairs, 1942. Pp. x, 227. Cloth edition, \$3.25; paper edition, \$2.50.

**THE CLOSED SHOP.** By Rev. Jerome L. Toner. Washington, D. C.: American Council on Public Affairs, 1942. Pp. viii, 205. Cloth edition, \$3.25; paper edition, \$2.75.

The position of organized labor in our contemporary socio-economic society presents many issues which demand well-reasoned consideration. Unfortunately, clear thinking on these issues, even by members of such a profession as the law, is made difficult by the interposition of shibboleths. Discussions about labor are frequently laden with such statements as: "Labor unions and their leaders are irresponsible" and "The closed shop is an evil device whereby an honest workman must pay tribute to a labor Czar for the privilege of working." Most often these charges are hurled without the knowledge of facts which would support or refute such accusations. To a considerable extent, these two accusations contradict each other. Without the closed shop, or some similar method of control over all the workmen in a particular unit of industry, a union can not be responsible or exercise any effective influence over those workmen who are not members. Thus, wildcat strikes by non-members, jurisdictional disputes and similar disturbances are entirely beyond the control of any particular union which does not have a union shop agreement. No formula exists, or can be devised, which will guarantee an effective and satisfactory management-labor relationship in all situations; but a study of the development and nature of various contractual relationships, both existing and demised, between employers and unions will reveal guides and pitfalls which will enhance the development of successful collective bargaining. The two books under review will go a long way to inform their readers about responsibility under collective bargaining agreements and about the closed shop.

In "Collective Bargaining Systems," Professor Pierson limits his study to "the question of responsibility" of both employers and unions under collective bargaining contracts. His approach to this question is fundamentally that of a case study, which makes good reading. Analyzing the adjustment procedure for the settlement of grievances and disputes of three industries which have just recently adopted bargaining contracts as compared with three industries which have had established bargaining processes for some time, the author concludes that the adjustment procedure is not determinative of responsibility. Next, the law of union agreements is scrutinized and is found wanting as a means of determining responsibility. The courts have often confused fundamental issues by endeavoring to wedge these issues into inapplicable legal categories. Moreover, when the parties under a contract come to an impasse, speed in settlement is essential and this cannot normally be obtained by resorting to the law. Particularly interesting is a chapter analyzing seven cases where a union and an employer had recently entered into written agree-

ments but, without exception, all dealings between the two parties were subsequently ended. One here discovers how completely some employers have demolished unions notwithstanding the National Labor Relations Act. The remainder of the book is devoted to three separate studies of as many industries which are widely divergent in their economic structure and in their employer-union relationship. In the automobile industry, there is found a highly mechanized and centralized industry which has only recently been organized. There, generally, the union's recognition is limited. In the coat and suit industry an entirely different situation is found. The shops are small, the workers are not centralized and the industry is highly competitive. There the union has been established for many years but its primary problem involved enforcing union standards which necessarily entailed the union's becoming concerned with the fundamental economic condition of the industry in order that union firms could maintain an advantageous economic position over non-union concerns. Relative to this issue the author is able to state: "Indeed the union has probably contributed more to the development of the industry than any other element in the field."<sup>1</sup> Finally considered is the coal industry, another highly competitive industry with a union movement which has been established for some time. There was a virtual breakdown of the collective bargaining process in the coal industry during the late 1920's primarily, according to the author, as a result of the union's refusal to consider the economic problems of the industry. In recent years, however, the U. M. W. A. has changed its policy in that it has fostered legislation directed to the economic problems of the industry, which has, along with other factors, improved the collective bargaining process.

Throughout the book a number of provocative recommendations are suggested. Some of these are: There should be an increased use of money damages for violations by either labor or industry of agreements contained in contracts. The adjustment procedure should be simplified with controversies moving quickly from spokesmen of less authority to spokesmen of higher authority; consideration should be given to placing time-limits on the various levels of negotiation, disputes over issues not covered by the agreements or over demands for immediate changes in the basic terms of agreements should either be deferred until the agreements expire or else sent directly to the parties responsible for drafting the original terms; the agreements should specify in some detail under what circumstances union spokesmen may confer with workers over grievances and under what conditions they may try to gain new members or collect dues; there should be increased use of impartial outside agencies as a court of last resort for deadlocks. The enforcement procedure of the National Labor Relations Board should be tightened; and particularly the time it takes the Board to dispose of particular cases should be substantially reduced. Consideration might be given to making the Norris-La Guardia Act inapplicable to strikes called in violation of union agreements; but it is first pointed out that such an amendment should be made only upon definite guarantees against employers' utilizing such an amendment to destroy unions. Such

---

1. l. c. 169.

destruction could be accomplished by an employer's first provoking a strike by its breaching virtually all agreements in the contract and then invoking such an amendment to destroy or diminish the effectiveness of the union.

Assuming the existence of good faith on the part of the parties, the author concludes that the essential requirement for successful bargaining is a thorough desire by the parties to understand the economic aspects of the particular industry and a genuine effort to place unionized firms competitively in an economic advantageous position. One of the major deficiencies of the book is the scant attention the author pays to union-management cooperation in improving the competitive position of union firms. No mention is made of Slichter's excellent book "Union Policies and Industrial Management." Another weakness is the tendency to consider the incidents of collective bargaining, particularly wage differentials, as being the essential causal factor of disadvantageous competitive positions. For instance, in his treatment of the breakdown in the coal industry insufficient attention is given to the wasteful manner in which many of our mines have been opened and operated, or to the advent of oil and electricity as competitive fuels. Moreover, reference to the union's insistence upon maintaining the high wage scale of the early twenties, without reference to annual income, produces an inadequate picture of the union's position. Taking the industry as a whole, the average per capita earning of all wage-earners in the industry in 1923 was \$851, for 1929 it was \$588 and in 1933 this figure declined "to the almost unbelievable low point of \$235."<sup>2</sup> Nevertheless, the author is correct that during this time the union did not pay sufficient attention to the economic condition of the industry, which it has since done through sponsorship of regulative legislation.

"The Closed Shop" by Rev. Jerome Toner is a historical treatment of the development of and attitudes toward the closed shop. The closed shop has had a long history in America. As early as 1667 there is a record that the carters in New York were granted a closed shop with a closed union. Until the approach of the 20th Century it is evident that the union shop was accepted as a natural incident of unionism; even such corporations as Carnegie Steel Company and such organizations as the National Metal Trades Association pursued a closed shop policy. Commencing around 1890 there were some local moves to establish the open shop which culminated in 1903 with a concerted drive by the National Association of Manufacturers to establish the open shop. The author fully demonstrates that this move, throughout its history, and also a successor movement, known as the "American Plan," while adopting the closed shop as a battle-cry, were essentially movements to abolish, often by ruthless means, the existence or, at least, all effectiveness of unions. To promulgate and propagandise this drive, its proponents did not object so much to the economic aspects of the closed shop; but instead leaned heavily upon a moral argument that employers have a moral responsibility toward their employees to see to it that they remain free workmen uncoerced in their election of employment and of the conditions of their employment. So, the author includes a chapter on

---

2. Parker, Glen L., *The Coal Industry* (1940) p. 67.

the position of the church toward the closed shop, and finds that as long as membership in the union is open there is nothing in the closed shop itself which is inconsistent with religious principles.

An apparent anomaly exists in our laws when one notices that the closed shop is permitted under the National Labor Relations Act, while it is expressly forbidden to railroad employees by the Railway Labor Act. This situation is explained by the fact that the four major brotherhoods did not oppose the introduction of this prohibition against the closed shop for a number of reasons: the closed shop was not necessary as a defensive weapon, the seniority system provided employee security, the non-competitive nature of the industry, the necessity of governmental supervision, the union insurance feature, the presence of the color line, and the influential position of the union in adjusting grievances.

A particularly valuable portion of the book is the author's analysis of the nature of the closed shop and the various gradations in which the principle of the closed shop may be applied. There are three essential features of a closed shop: jurisdiction, discharge of non-unionists, and specified procedures of hiring. These features often vary in the manner of their introduction and in the nature of their application. Sometimes other features are added, such as seniority or the check-off. The author's observations on some of these additional features are enlightening. Contrary to the opinion of many people, the check-off is frequently preferred by employers, while some unions do not urge it even when they have a closed shop agreement because "membership in good standing is a condition of employment and fulfillment of financial obligations to the union is a basic condition of good standing. Such unions prefer personal payment as a means of maintaining union-consciousness and a feeling of direct responsibility."<sup>3</sup>

The author's conclusion is that "the closed shop represents the acme of unionization through which the most effective type of collective bargaining is possible" provided that "(1) every union must be open generally to qualified workers on reasonable and non-discriminatory terms; and (2) workers who have been refused membership and those who have been suspended or expelled from a union should be permitted to appeal their cases to an impartial chairman or a labor board."<sup>4</sup>

Lawyers who are prone to go into a labor situation with their "dukes up" might win on particular issues; but at the same time they will probably lead their clients, whether labor or management, into turbulent labor relationships. Lawyers will do much better to become thoroughly acquainted with the processes and characteristics which are indigenous to labor relations and to fortify themselves with an understanding of economic factors affecting the particular establishment and industry involved. Today, because of the war, many labor issues are being held in abeyance; but upon the cessation of the war, these issues must be confronted. If lawyers are not prepared to participate in solving these issues, they will not be consulted.

JOHN R. STOCKHAM.†

---

3. l. c. 51-2.

4. l. c. 191.

† Member of the Missouri Bar.

