CHAPTER VI

COLLECTIVE AGREEMENTS

The collective agreement is sometimes regarded as a means of putting an end to industrial strife. Strikes are obviously clumsy instruments with which to settle controversies. They bring hardship to the workers, they are annoying and costly to the employers, and by interfering with production they increase the cost of living and cause inconvenience to the public. Cannot all parties come together on a fair basis and agree to arbitrate future difficulties? This is a view frequently expressed. There is a measure of truth in it. No union wishes to strike for a concession which can be gained by peaceful methods. Wise unions wish to obviate strikes for trivial reasons, strikes which do nobody any appreciable good and could be avoided by a little negotiation. Employers, on their side, are willing to pay a price for industrial peace. In an industry still subject to competition, the most progressive employers, who wish for the sake of efficiency to treat their workmen well, are glad of the assistance which a collective agreement offers in bringing recalcitrant competitors into line. In a sense and to a degree there is a real community of interest between the enlightened employer and the progressive union.

Upon this community of interest can be built agreements calculated to minimize controversy.

It is not true, however, that the chief interest of either the employer or the employee is to maintain peace. The employer desires above all else to retain control of the productive process, and to use that control primarily for the benefit of the capital invested—secondarily, perhaps, for the benefit of the public and the employee. The union, on the other hand, whatever its conscious philosophy, finds the reason for its existence in the desire to benefit its members. To benefit them it must sometimes encroach on the productive control of the employer. Here is a fundamental conflict of interest. The conflict is often far from the surface, but even with the most amicable intentions on both sides it crops out on occasion and creates a situation in which both sides would rather incur the expense of a strike than submit to compromise.

Another popular belief with regard to collective agreements is that the agreement itself is the source of the benefits which labor wins, as if it had been established by a sort of divine edict. This is taking the appearance for the reality. The agreement is but a symbol of the power and successes of the union, it simply records the gains the union has been able to make. It would be a dead letter if the union were incapable of enforcing its provisions. In many cases it is abrogated or turned into a dead letter the moment the employers feel strong enough to defeat the union.

In other words, the collective agreement represents the point at which the power of the union balances the power of the employer. It is not law founded upon some abstract rule of justice or bill of rights, but is merely what its name implies, a document specifying the conditions under which both parties are willing for a specified time and considering all the circumstances, to live in peace. This remains true even if, as in the clothing industry, the agreements have become highly evolved constitutions regulating in much detail the relations of employer and employee. The only circumstances in which it could be permanent would be those in which the relative power of employer and employee should remain forever unchanged and there were no important changes in the characteristics of the industry itself. Such circumstances are of course hardly conceivable. It might be continually altered by conciliation or arbitration, without strikes, if neither party ever deemed itself stronger than it was. But it is hardly likely that two parties with opposing interests would forever deny themselves the actual test of strength. It is difficult even for impartial observers to determine where the balance of power lies at any given moment, to say nothing of the contestants themselves.

An analysis of the collective agreements in the clothing industry will illustrate in part what an agreement can and what it cannot do. The first and best known, the Protocol of Peace in the cloak, suit, and skirt industry of New York, signed on September 2, 1910, had several functions. In the first place, it recorded the concessions made to the union as the result of the strike, concessions which may be considered the organic law of the agreement. Under this head come the regulations regarding mechanical power, the abolishment of home work, the abolishment of subcontracting, the hours and wages of the workers, the preferential union shop, etc. In the second place it established a judicial system consisting of a Board of Arbitration, whose decision was to be accepted as final on all future controversies, and a Committee on Grievances to deal with minor disputes. In the third place it founded the Joint Board of Sanitary Control, containing representatives of employers, employees, and the public, to establish sanitary standards and see that they were carried out.

In this system there was no sharp division of functions. The Board of Arbitration, consisting of a representative of each side and a representative of the public to act as chairman, was not only a final court of appeals to give interpretations of the established law, but it could actually change the fundamental law—that is, it had the legislative power to revise wages and hours, or settle any other dispute which might arise. The joint Committee on Grievances, consisting of representatives of each side with no impartial chairman, could not only decide minor disputes, but it could devise legislation to guide its own procedure and to help make effective the basic law. The Joint Board of Sanitary Control

combined legislative, judicial, and executive functions. In a sense, the union and the manufacturers' association had executive duties, since they were morally bound to see that their respective memberships adhered to the agreement and the decisions under it.

It is clear that the framers of the Protocol, building on a hope that there was enough community of interest between the contending parties to make permanent peace possible, tried to frame an organic law which could grow naturally as conditions changed. Otherwise they would have made a sharper distinction of function. If they had recognized that there was, besides a temporary community of interest in maintaining peace under this agreement, a fundamental conflict of interest which would tend to destroy or alter it, they would have created a system of machinery to interpret and make effective the agreement as long as it should last, but they would not have expected this same machinery to enact new organic laws. Nevertheless, the system was fitted to endure as long as an effective community of interest existed.

The Committee on Grievances, at first consisting of two representatives from each side, was soon enlarged to five from each side, and worked out a technique of conciliation. Its name was changed to the Board of Grievances. Two chief clerks were appointed, one for the union and one for the manufacturers, to oversee the investigation of disputes. The chief clerk for the union was also the manager

of the protocol department of the union, and the chief clerk for the association was also the manager of its labor department. A number of deputy clerks were appointed for each side. Whenever a dispute arose, the first attempt at conciliation was directly between the shop chairman and the employer concerned. If this failed, a complaint was filed. When a complaint was filed by a union member, it went to the union's chief clerk; when it was filed by an employer, it went to the Association's chief clerk. The chief clerk in question forwarded the complaint to his confrère, and if either side was clearly in the wrong, the matter was settled by a few words from the labor manager to the employer, or from the protocol manager of the union to the shop workers. If the case was not clear, an investigation in the shop was at once undertaken by two of the deputy clerks, one for each side, acting in concert. They reached a decision if possible, recommended the action to be taken, and reported in writing the disposition of the case. If they disagreed, the two chief clerks made a reinvestigation, and settled the case if they could. If they in turn disagreed, the dispute went before the whole Board of Grievances, and if that was deadlocked, the matter came before the Board of Arbitration, where the representative of the public held the deciding voice. This arrangement worked in such a way that clear cases of violation of Protocol law or precedent were disposed of by subordinate representatives of the two parties to the agreement acting in concert, whereas more

complex disputes, or those involving new issues, went before higher bodies.

Between the date of the creation of the Board of Grievances, April 15, 1911, and October 31, 1913, 7,656 complaints were filed. About 90 per cent were adjusted and dropped by the deputy clerks, nearly 8 per cent were adjusted by chief clerks, 2 per cent were adjusted by the Board of Grievances, and 1 per cent were decided by the Board of Arbitration. Apparently, therefore, the system was working well. It would seem as if the rank and file should have been satisfied with the settlements, since their deputy clerks—otherwise known as business agents—were democratically chosen. The method of election was as follows. Each of the local unions nominated candidates. These candidates were subjected to an examination by the New York Joint Board—the elected executive of the local unions. The candidates were rated as a result of this examination in four grades, a, b, c, and d, and were then subjected to a general vote of the entire membership. This election chose business agents. From the business agents the Joint Board chose four or five for chief clerk and deputies. The Joint Board, however, sometimes appointed as chief clerk a man not elected by the membership.

Nevertheless, friction existed and was increasing. Although at first Protocol law was admirably enforced, it was not long before the union requested the right to send inspectors into shops where no complaints originated, on the ground that workers

might by intimidation be prevented from complaining. This request was ruled upon by the Board of Arbitration, with the result that a joint investigation of any shop was authorized upon the written request of any member of the Board of Grievances. Of the cases which on account of deadlock had to go to arbitration, one-third arose in the first two-thirds of the period mentioned above, and two-thirds arose in the last third of the period. At length the union, claiming that it did not receive justice from the Board of Grievances as constituted, and alleging undue delay in reaching decisions, requested a change in the machinery by which, if the Board of Grievances could not agree, the question was to be submitted to an impartial arbitrator, to be chosen on each occasion from a number of designated representatives of the public. The arbitrator was to render a decision within 48 hours after the submission of the evidence, this decision to be final.

An intensive investigation of the working of the machinery for adjustment resulted from this request.[1] The investigation established the facts quoted above as to the small proportion of cases which were referred to the Board of Grievances, and the still smaller proportion in which they were unable to reach a decision.

It seemed at the time that the system must be reasonably satisfactory because in only nine cases out of 7,658 complaints did the Board of Grievances

[1] Industrial Court of the Cloak, Suit and Skirt Industry of New York City. Bulletin of U. S. Bureau of Labor Statistics, No. 144.

remain in deadlock. The report further pointed out that the Board had never deadlocked on questions of fact, but only on questions of law or motives. An examination of the actual cases in which no decision was reached did not seem to reveal anything particularly menacing. Three of them were complaints of manufacturers against shop strikes, two were complaints of employees against discrimination, two were against irregular price settlement, one was against a shop lockout, and one—involving twelve separate cases—was against non-payment for a holiday (the holiday happened to fall on Saturday). It did not seem to occur to the investigators that the heat generated by these few cases was entirely out of proportion to their specific importance, and must be due to unsatisfactory conditions of a more general nature.

The investigation showed that the rules of procedure were fair and adequate, that the facts were fully ascertained and presented, and that investigations and decisions were reasonably prompt. Among the cases brought before the Board, no discrimination against the union was apparent. The following table shows their disposal.

Disposition	Per cent.
Compromised	29.58
Dropped	25.13
In favor of unions	17.90
In favor of association	12.30
Disagreement	11.18
Withdrawn	3.91

The large percentage compromised or dropped seemed to show the success of conciliation. The cases dropped were those in which the contending parties came to an understanding before the investigation, those in which the nature of the complaint was too trivial to be considered, those in which there was insufficient evidence to establish the charge, those in which the union did not press for a solution, or those between employees, in which the employers were in no way involved.

A classification of the cases according to the nature of the complaint is more enlightening, in view of future events. The two most frequent complaints by the union were discrimination against individuals (22.1 per cent) and alleged wrongful discharge (17.3 per cent). The most frequent complaint of the Association was against the shop strike or stoppage of work (75.5 per cent). Although the union secured favorable adjudication of minor complaints in over 61 per cent of those against underscale payments and 50 per cent of claims for wages due,—it received favorable decisions in only 18.5 per cent of cases against discrimination and in only 19 per cent of cases of alleged wrongful discharge. In minor complaints the manufacturers' association received a high percentage of favorable decisions, but in complaints against shop strikes their share of success was only 20.9 per cent. It is highly significant that in the complaints most frequently presented, decisions satisfactory to the complainant were least frequent.

These major complaints on both sides had to do with questions of control of the productive process. They were not primarily questions of material conditions. It might have been expected, by those who conceive the chief conflict between employer and employee to be that about wages, that most of the disagreements would concern piece prices, which the Protocol had left to be settled between the shop price committees and the individual employers. Disputes in price-making gave rise, however, to only 5 per cent of the complaints filed.

The union representatives, reflecting the sentiment of the rank and file, were especially on their guard against cases of discrimination or discharge, which they suspected the worker suffered as a result of legitimate union activity. Some discharges followed shop strikes, which the letter of the Protocol prohibited; but the union contended that the remedy against the shop strike was not discharge, but an appeal to the judicial machinery in the Protocol.

On the other hand, the manufacturers were especially jealous of their "right of discharge," which they maintained was absolutely essential to discipline and to efficiency. When the workers protested against such discipline, by means of shop strikes, the employers pointed to the fact that strikes were forbidden by the Protocol, and that the judicial machinery was open for appeals against unjust discharge.

Yet when, in either case, the Board of Grievance

was appealed to, the union representatives were reluctant to outlaw and discipline shop strikes, and the employers' representatives were reluctant to limit in any way the right of discharge. The consequence was that in these complementary grievances an increasing tendency was manifest to disregard conciliation and to appeal to direct action. It was a fundamental conflict cropping out—the deep seated conviction of the worker that he has a right to his job, opposed to the deep seated conviction of the employer that he has a right to unlimited authority in his shop. In just this fundamental conflict effective community of interest began to break down, and the Protocol was violated.

A significant commentary on this struggle is furnished by the fact that by far the greater number of complaints filed by the union arose during the dull seasons, when discharges were necessarily frequent and the small amount of work available gave opportunity for unfair distribution. Here technical complaints of injustice often masked the natural interest of the worker in holding his job. A union member was discharged, let us say, when work began to fail. He had been active in gaining concessions for the workers. The employer claimed that he was less efficient than the people retained. Was the discharge a result of discrimination? Such questions are difficult to decide. Owing to the difficulty of analyzing motives, the arguments about unjust discharge took on a metaphysical and hair-splitting nature. It can hardly be doubted, however, that

the ruling and unconscious desire of the workers was not so much to maintain technical justice under the Protocol as to establish a fundamentally just condition in which all workers should retain their means of livelihood. This desire was intensified by the character of the industry itself—by its seasonal fluctuations.

The request of the union for a change in the machinery and for greater promptness in decisions was merely a blind attempt to break away from the difficulty; the basic cause of the trouble was not at the time fully understood by any of those concerned. In an attempt to satisfy the request, the Board of Arbitration on January 24, 1914, created a Committee on Immediate Action, to consist of the two chief clerks and a third impartial person. This committee was empowered to decide all questions submitted to it by the chief clerks except those involving Protocol law. It could not consider cases in which a stoppage of work existed until the striking workers returned to their jobs. An appeal from its decisions could be taken direct to the Board of Arbitration, without first passing through the Board of Grievances. What this ruling did, therefore, was merely to substitute a smaller and less unwieldy body for the Board of Grievances, and to outlaw shop strikes.

The new committee of course did not solve the problem. The questions regarding the right of discharge and the shop strike constantly grew more contentious. Among other things, they involved the

interpretation of the preferential union shop plan,[2] and its application in dull seasons. The *New Post,* a journal published by the New York Joint Board of the union, discussed them at length, and the rank and file became increasingly restless. The friction gave encouragement and power to those employers within the association who were most strongly anti-union and cherished the hope of escaping from any form of joint control. The association attempted to fix the blame for the friction upon the chief clerk of the union, refused to work with him any longer, and presented a demand for his resignation. Although this action was in itself a violation of the Protocol, the union for the sake of peace permitted him to resign.

Meanwhile the manufacturers came to feel that they were in a more advantageous position than at the time of the signature of the Protocol, because a depression in the trade incident to the war had caused much unemployment. Piece prices went down steadily. The Board of Arbitration was trying to find a way out of the confusion, but without waiting for its final action the manufacturers' association abrogated the Protocol on May 20, 1915, giving as a reason the recurring shop strikes. This followed soon after the trial of the cloakmakers' leaders for unproved charges growing out of the strike of 1910.

Public opinion set strongly against the manufacturers, and as a last attempt to preserve industrial

[2] See Chapter V.

peace Mayor Mitchel appointed a Council of Conciliation consisting of prominent citizens. After more than three weeks of public hearings the Council handed down a decision raising the scale of wages, renewing the Protocol, and granting the right of review in all cases of discharge. The decision was at once accepted by the union, and was afterwards reluctantly ratified by the association. During the next year the fundamental conflict became intensified. On April 30, 1916, the manufacturers, after again abrogating the Protocol, declared a lockout. They charged that on account of the shop strikes the Protocol was a failure, and that they were fighting a battle of principle—a battle for the "right of discharge," without which they could not remain masters in their own establishments. They stated that they could not allow " outsiders "—the representatives of the public in the Protocol machinery —to determine whom they might and whom they might not employ.

The result was a bitter general strike which lasted for fourteen weeks. The test of strength proved that the union was, even in the unfavorable circumstances of the moment, too powerful to be destroyed. Both sides debated the issue at length in newspaper advertisements. Finally the President of the union, Benjamin Schlesinger, issued a statement which became the basis of negotiations. He wrote: "We are willing to concede to the employer the right to increase or decrease the number of his employees to meet the conditions in his factory and to retain such

of his employees as he may desire on the basis of efficiency. This concession is made honestly without modification or limitation. It is of course understood that the workers retain their right to strike against any employer who will exercise the above power arbitrarily or oppressively or use it as a weapon to punish employees for union activity. Neither the workers in this industry nor in any other body of free American workers can exist without this right." The negotiations resulted in a new agreement embodying certain specific concessions to the union. A 49-hour was substituted for the 50-hour week, minimum piece rates were agreed upon, the preferential union shop was retained and further defined, submanufacturers to whom the inside shops gave out work were to be registered so that union conditions could be made uniform, the association guaranteed to enforce the conditions of the agreement on its own members, and price committees were recognized as before. The judicial system of arbitration under the Protocol, however, was not renewed. The agreement was limited to three years. The employer was to retain the right of hiring and discharge, and the union was to retain the right to strike in individual shops.

This agreement recognized the realities of the situation. In matters where a relatively lasting balance of power had been reached and community of interest existed and could be enforced, it established legislation. In the matters where the fundamental conflict might break out at any time and could not

be adjudicated, it left the issue to tests of strength by direct action. It did not pretend that permanent peace could be maintained.

To say this is not to say that ensuing relations of the manufacturers and the workers were any more happy than before. The conflict was not abolished; it was frankly thrown into the arena, and the strain of attempting to settle it was removed from the agreement itself. Unjust discharges, or discharges which the workers felt were unjust, still occurred. Shop strikes were called, about these and other matters. The recurrence of the dull seasons still impressed upon the workers a sense of injustice in losing their jobs or in having their work cut down. The general lack of order in the industry, and the wide variations in wages, made constant trouble. Some shop committees were stronger than others and could enforce greater concessions. Some manufacturers were conciliatory, others recalcitrant. The anti-union manufacturers seemed to hold their ascendancy in the association, and gave every sign of trying to break down the agreement, and in their own good time, engaging in another battle to destroy the union.

The battle came early in 1919. The union made it the occasion, not only of preserving itself and its former gains, but of improving its position. Strikes in both the cloak industry and the dress and waist industry were brought to a successful termination. The 44-hour week and increased wages were gained, but the chief victories concerned the

points of contention left open by the previous agreement. Since that had permitted shop strikes and local stoppages, it had interfered with the standardization of wages throughout the market; the strongest locals had won all they could extract from the employers while the weaker ones had been left behind. The remedy for this inequality was two-fold. In the first place, week work with minimum rates was in many cases substituted for piece work. In the second place, where piece work was retained, standard minimum rates were worked out by the "log" system—one which had been adopted earlier, but had not been systematically and universally applied. This consisted in establishing a minimum hourly rate as a basis, and then figuring the piece rates from it by observing how long it took for an average group of workers to perform the operation in question.

A method of reviewing discharges was also adopted.[8] Any worker discharged after his first two weeks in the shop had a right of appeal. His case was first reviewed by the chief clerks or their deputies, and if they were unable to agree, by an "impartial chairman"—a new office created as a substitute for the old and somewhat ambiguous "representative of the public." The impartial chairmen were paid by both sides, and were chosen for their familiarity with industrial problems, and their neutrality of outlook.

[8] The method here described existed in the dress and waist industry. Procedure in the cloak and suit industry was not outlined in such detail, as may be seen from the agreement, printed in full in Appendix.

An employee discharged before he had worked four months for his employer, if his discharge was found to be "unfair, arbitrary, or oppressive," had a right either to reinstatement or to a money payment fixed by the reviewing body; the choice between the two methods of redress being left to the employer. If he had been employed more than four months, the redress was the same, except that the Impartial Chairman rather than the employer had the right to choose which method should be applied. No discharge whatever was to be permitted for union activity in the case of a member of a Price Committee. The size of the Price Committees was limited.

This provision, if fairly carried out, of course goes a long way towards settlement of the discharge issue in favor of the union. It is one of the most remarkable instances on record of the tendency towards diminishing control over production exercised by the employer. Under it the old "right of discharge," so bitterly defended as a fundamental necessity, is punctured. It must be noted, however, that the provision does not establish the right of the worker to a job. There may still be contention about what is "unfair, arbitrary, or oppressive." And far greater measure of control over the industry than this must be achieved before the union can abolish seasonal fluctuations, which are at bottom responsible for most of the discharges. The provision is chiefly valuable in clearing the air, and in tending to demonstrate the more fundamental cause

of dissatisfaction, which had previously been obscured by the demand for formal justice.

With this issue settled, shop strikes were forbidden, and it was thought possible to renew part of the machinery of arbitration. A Grievance Board was established, with the Impartial Chairmen holding the deciding vote, to pass on disputes under the agreement. The duration of the agreement, however, was limited.

The Joint Board of Sanitary Control established by the original Protocol was composed of two representatives of the union, two representatives of the manufacturers, and three representatives of the public. Its function was "to establish standards of sanitary conditions to which the manufacturers and the unions are committed, and the manufacturers and the unions obligate themselves to maintain such standards to the best of their ability and to the full extent of their power." Both parties have contributed an equal amount to its support.

The abolishment of home work in the making of women's clothing had at one stroke removed the greatest menace to the workers and the public, but much remained to be done. The tenements still stood, and those who lived in them continued to be abnormally subject to disease. The work itself, requiring intense concentration and a stooping position, produced favorable conditions for tuberculosis and sub-normal vitality. Many of the shops were not in modern buildings; they lacked adequate ventilation, were not fire-proof, had insufficient stairways

and fire-escapes, were not kept clean, had insanitary toilet facilities, used dim artificial light or did not protect eyes from the glare of improperly shaded lamps. The fire in the Triangle building, in which young girls were burned to death or were crushed in jumping to the pavement, had shocked the public conscience, but laws and their perfunctory enforcement did not prevent similar fire traps from continuing to house clothing shops.

The industry employed about 60,000 people in about 2,000 separate establishments; new shops were being constantly opened. In 1913 the Protocol in the dress and waist industry added 40,000 workers and 700 factories to those under the supervision of the Board. One of the first inspections (August, 1911)[4] showed 63 shops in buildings with no fire-escapes, 236 with drop-ladders lacking or useless, 153 with entrances to fire-escapes obstructed, 25 with doors locked during working hours, and 1,379 with doors opening in. Although over one-third of the workers were in shops above the sixth floor, all these shops had flimsy wooden partitions, were littered with inflammable materials like cotton and woolen scraps and pine packing boxes; only 128 had automatic sprinklers and but 15 practiced any sort of fire drill. In lighting and sanitation an even worse condition appeared. Medical examination of 800 workers chosen at random (March and April, 1912) showed that only 298 were free from any disease

[4] Third Annual Report of the Joint Board of Sanitary Control, December, 1913.

whatever, and the rest suffered from one or more diseases. Of the 800, 21.7 per cent had anaemia, 21 per cent digestive trouble, 13.7 per cent respiratory diseases, 13.9 per cent nervous diseases, and 1.6 per cent suffered from tuberculosis. This does not by any means exhaust the list.

Improvement of these conditions could result only from the co-operation of those immediately concerned. Here, if anywhere, an effective community of interest existed. The Joint Board of Sanitary Control went to work with admirable system and energy, sometimes relying on existing law, and sometimes setting up its own standards in matters which the law did not touch. Its constant vigilance and its pressure upon the backward employers, heartily supported both by the union and the better elements of the employers' association, succeeded in reducing hazards to life and health. The direct and easily aroused interest of the public in these affairs, not obviously connected with the industrial struggle, helped the work to be effective. Of course, any such agency can do little more than mitigate the worst evils necessarily incident to overcrowding in a great city.

In addition to inspection and encouragement of better conditions, the Board conducts educational work of preventive nature in safety and sanitation, has established cooperative medical and dental clinics for the workers in the two industries, and has assisted the union in founding a tuberculosis sanatorium. Both dental clinic and sanatorium are sup-

ported entirely by the unions. Progress in safety is naturally much easier and more rapid than in the health of the workers.

The best proof of the usefulness of the Board of Sanitary Control is that when the Protocol was abrogated it continued to function with the consent and financial support of both union and employers.

The first important agreement in the manufacture of men's clothing was that reached in Chicago in 1910 by Hart, Schaffner, and Marx and their 6,500 employees. Although in some respects this document is similar to a collective agreement, since the firm, having numerous shops, consented to bargain collectively with its employees, it is not a collective agreement in the sense usual in the clothing industry—that is, an agreement between the union and a group of employers.

The agreement in its original form did not recognize the union, but it established a Board of Arbitration which should have the final word on all disputes during its life, recognized the right of the presentation of grievances through a democratically chosen "fellow-workers," and specified that the employer should establish a labor complaint department to entertain such grievances. It was found that the labor complaint department, representing the disposition of the firm to adjust disputes from above, did not prove satisfactory to the workers, and that an increasing number of cases was referred to the arbitrators. Many of these cases concerned discrimination and discharge, and could not

be decided by people who did not have an intimate technical knowledge of the trade, and so could not pass on questions of efficiency. On April 1, 1912, a Trade Board was therefore established to investigate and attempt to settle disputes before they were referred to the Board of Arbitration. The Trade Board corresponded to the Board of Grievances in the New York Protocol, and like it was composed of an equal number of members from each side. The union members had to be employees of the firm. Unlike the Board of Grievances, however, the Trade Board had an impartial chairman. It was empowered to appoint chief deputies and deputies, corresponding to the chief clerks and deputy clerks in the Protocol machinery.

As in New York, the deputies succeeded in adjusting most of the grievances, and the Trade Board most of the others. Only a few ever came before the arbitrators. As in New York, by far the greater number and the hardest fought of the employees' grievances concerned discharge, and the employer seemed to be most bothered by shop strikes. When, in the spring of 1913, the agreement was about to terminate, prolonged negotiations failed to result in its renewal, and a strike seemed imminent. The union asked for shorter hours and higher wages, but its chief demand was for the closed shop, which it believed was necessary to protect its members against discrimination. There was a feeling among the workers that the small proportion of non-union employees not only profited by the gains of the union

without sharing in its burdens, but were favored by the company in distributing work or cutting down the force in the slack seasons. At the last moment peace was preserved by the adoption of the preferential union shop. The right of review of discharges by the Trade Board was granted. The powers of the Board of Arbitration were enlarged so that it might adjust wages. With these and some minor additions, the agreement was renewed for three years.

The rules for the application of union preference were carefully formulated in detail, to minimize disputes. Later the company, wishing to eliminate the discharge grievance if possible, worked out an admirable technique in the matter. Foremen were not allowed to discharge, but after several warnings they might suspend. Discharge could come only from the labor complaint department. The result was that this means of discipline was exercised sparingly. Only 21 per cent of the employees suspended were discharged, and of these over half were reinstated by the Trade Board on review.

The comparative success of the Hart, Schaffner, and Marx agreements in avoiding general strikes is due to a number of factors. Here the union was dealing with one firm engaged in quantity production, making a good quality of clothing, and having a high standing in the trade. Its product was assured a relatively steady sale through advertising. The employer was therefore able to maintain conditions constantly a little in advance of those ruling

throughout the industry, and to eliminate many of the inequalities which cause trouble when the industry as a whole is considered. The full force of seasonal fluctuations was not felt in his shops. Furthermore, he was wise enough to yield point after point as the union gained strength and consciousness of its desires, so that the equilibrium of power between the organized workers and the employer was constantly expressed in their formal relations. In a small degree and to a limited extent, the conditions in these shops indicate what might be the conditions throughout the entire industry, if some force could control and regulate it efficiently. To say this is far from saying, however, that there is no fundamental opposition of interest in the shops concerned, and that a point may not sometime be reached when this opposition will assume precedence over the effective community of interest which has been organized and in force since 1910.

The agreements in the clothing industry were among the first to recognize in theory that the public has a legitimate interest in adjusting disputes. To their boards such distinguished "representatives of the public" as Justice Louis D. Brandeis of the Supreme Court, United States District Judge Julian W. Mack, and Rabbi Judah L. Magnes have been called. Such men have given conscientious and valuable service. Yet after all it is little more than a matter of form to call them representatives of the public in anything like the sense in which the other participants are representatives of employer and

employee. "The public" is still a vague and unanalyzed term. It may mean the people in their capacity of consumer, or the community in its exercise of police power for the general good, or the middle classes as distinguished from organized labor and organized capital. No representative of the public in any specific sense can be added to arbitration boards until organized consumers, the state, or some other functional body elects them to safeguard specific interests. The "representatives of the public" who have previously been appointed are rather men selected as impartial chairmen, chosen on account of their reputation, authority, probity, and wisdom.

In New York the Amalgamated and the manufacturers of men's clothing for several years have had no formal agreement. During the war, the War Department established a Board of Standards, and later an Administrator for army clothing, who adjusted disputes where government orders were involved. A strike broke out late in 1918, and was finally submitted to the arbitration of an "Advisory Board" consisting of experts in industrial relations. This board granted the 44-hour week and wage increases, recommending that the concessions be applied throughout the country. It later submitted supplementary reports,[5] based on the Hart, Schaffner, and Marx experience, and advised the appointment of a labor manager for the employers in the New York market, and an impartial chairman for the review of discharges and the settlement of other disputes. The aim was not to write a formal agreement, but to build a basis on which the law of the industry could grow by decisions of the impartial chairman, just as public law grows by successive decisions of the courts. It should be noted that the absence of a formal agreement allows the question of wages and hours, as well as other issues, to be brought up at any time, rather than at some date previously set for the expiration of an agreement. This arrangement corresponds more flexibly with the realities of the economic situation.

[5] See Appendix.

Subsequently a National Industrial Federation of Clothing Manufacturers was formed by the employers' associations in New York, Chicago, Baltimore, and Rochester, the chief centers of the men's clothing industry. Each association appointed an industrial expert as its labor manager, and the four labor managers were united in a board to work out uniform policies. Finally, in the summer of 1919, a joint industrial council to cover the nation was formed by the National Federation and the Amalgamated union. This council has remained temporarily dormant, but there is a chance that it may be revived.

Whether this ambitious undertaking will lead to permanent industrial peace, as some of its founders hope, remains to be seen, but at least it is an advance in systematic regulation of the industry comparable only with the advance made when the unions ceased dealing with the separate manufacturers in one market, and resorted to collective agreements

with an association. It clears the ground for the consideration of some of the larger possibilities, such as the mitigation of seasonal fluctuations through unemployment insurance. It is the first joint Industrial Council, the parties to which are a national association of manufacturers and a national industrial union, to be consummated in the United States.[6] The new experiment in the men's clothing industry is therefore one of the greatest significance.

The latest agreement of the Cap Makers, consummated in July, 1919, has three interesting innovations. One is the provision that the schedule of wages shall be readjusted every six months to meet the changes in the cost of living. This provision was included in a number of awards by the government during the abnormal conditions of the war, in cases where the employer was protected by the fact that he was working on a government contract providing for his reimbursement in the event of his being forced by the award to grant higher wages. Few such provisions, however, have ever before been included in a wage agreement between a union and a manufacturers' association dependent on the open market. A still more remarkable passage reads: "No manufacturer shall give out work to be made

[6] The coal miners and coal operators developed a somewhat similar organization several years ago, but on a basis not recognizing, as does this arrangement, the latest achievements of labor's control in the shop. An Industrial Council in the book and job printing industry includes, on the employees' side, not one industrial union, but several craft organizations typical of the old unionism, and came near being wrecked by a quarrel between conservative officials and radical locals.

for him in non-union shops, or buy goods from such shops. No manufacturer shall sell goods to a concern at a time when there exists a controversy between the Union and the concern." This clause furnishes a suggestion of a new means of extending union control.

The agreements whose operation we have described in some detail are merely typical of others set up in other branches of the industry and in other cities. Most of them have undergone much the same process of development, modified of course by the experience gained in labor management, conciliation and union tactics, and by the peculiar circumstances in each case. In every trade and city in which the clothing unions are now strong, some such agreement exists with a manufacturers' association including the most firmly established and largest producers. Similar agreements with individual independent manufacturers cover the remainder of the industry in question. The tendency is for the manufacturers' associations to extend over an increasing proportion of the industry. They are also acting with greater unanimity throughout the nation. It is quite possible that the next general strike or lockout in the clothing trades may be a national one, and it is even within the range of vision that a strike may cover various branches of the industry at the same time.