The Incorporation of Trades-Unions

I.—Advantages and Disadvantages

By Carroll D. Wright

United States Commissioner of Labor

THE constantly recurring conflicts between employers and employees are more and more based on the question as to whether trades-unions shall be recognized by the management. The recognition of the unions, in a popular sense, comprehends something entirely different from what is meant by the unions themselves. In the former case it is understood to mean simply a recognition on the part of employers of the existence of the unions and dealings with their officers. On the part of the unions themselves the recognition is understood to mean something more than this, even in many cases to taking part in the establishment of rules and the regulation of wages.

Such conflicts lead to the proposition that labor unions should be incorporated in like manner as capitalistic associations are incorporated—that is, that under the law the unions should become responsible for their contracts. Under the general laws of the different States relating to corporations of all kinds, whether for business, educational, religious, or benevolent purposes, trades-unions can easily secure a charter. The States of Iowa, Louisiana, Maryland, Massachusetts, Michigan, Nebraska, New Jersey, Ohio, Pennsylvania, and Wyoming make especial mention of trades-unions in their statutes relating to corporations, but they do not provide any especial duties, rights, or liabilities other than those pertaining to all corporations. New York formerly had a special law, but trades-unions can now be incorporated under the general statute. The United States, by acts of 1885 and 1886, provides for the incorporation of National unions having headquarters in Washington. Some of the unions of the State of New York are incorporated, but there are very few incorporated unions in other States.

The advantages of incorporation are that the union, under a charter, becomes a person in the eyes of the law; that it can sue and be sued, as individuals, corporations, and firms can sue and be sued. It would have standing in the courts; it would be better able to own and control property, and would have many rights and privileges that trades-unions as voluntary associations do not have. By incorporation unions would stand better in public estimation. As a legal person, they could enforce their contracts against employers. They have been debarred heretofore from appearing in court by representatives. They have thus lost advantages which would have been of the greatest importance to them.

On the other hand, labor leaders claim that there are disadvantages which in a large measure offset the advantages. They admit the benefits which would come from incorporation, but they apprehend the dangers which would come through the assumption of duties and liabilities which do not now specifically belong to the unions. They would be obliged to have funds for strike and benefit purposes; in fact, some capital, although no stock. This capital, or the funds, could be attached under an action of contract or tort, and it is feared by members of unions that such action would result in their disruption. There is great apprehension also that whenever a union might be brought into court and judgment for any cause secured against it, the union would collapse. Hence the fear that ultimately incorporation would mean the destruction of trade-unionism. Members also fear that the writ of injunction would be much more severe in its operation under incorporation than at present, and that they would not receive fair treatment from the courts.

Considering these alleged advantages and disadvantages, it would seem that the advantages outweigh the disadvantages. Our courts, on the whole, are honorable, and, in their capacity as administrators of

law, pure and incorruptible. Here and there an unfair judge might cause a great deal of difficulty, but, on the whole, the high character of the American judiciary is a sufficient guaranty against unfair treatment.

II.—The Unionist Position

By Joseph R. Buchanan

Labor Editor of the American Press Association

THE incorporation of labor unions is a question almost as old as the unions themselves. A majority of the leading unionists of this country are emphatically opposed to the idea. The disadvantages growing out of incorporation would, they say, far outweigh the advantages, and the so-called advantages would be two-sided. Take, for instance, the holding of property: An incorporated union would be enabled to protect its property by exacting of its officers bonds, against which, if necessary, suits could be instituted; but the property would also be subject to the orders of a court in a case against the union. The funds of a National union could be attached pending the decision of a court in a suit for breach of contract by a local union, even when such breach was in absolute violation of the National union's expressed will. Therefore it is a question whether the right to sue, with its corollary, would be of benefit to trades-unions in their present stage of development.

In recent years labor unions have had just cause to dread "government by injunction." Incorporated, the unions would be at the mercy of every court in which sympathy or personal interest tilted the judge, in the slightest degree, the other way. As it is now, violation of an injunction reacts only upon the direct violators. As it would be then, a union could be demolished if any of its members disobeyed the orders of a judge.

If incorporated, the power of a labor union to control its membership at all times, regarding only expediency and its own preservation, would be greatly abridged. The existence of the labor union is dependent upon the enforcement of the will of the majority and the maintenance of discipline. Put a union on a plane where it could be haled to court at the instigation of a member suspended or expelled for "scabbing," or other violation of rules, and that union could be made the prey of every unprincipled and weak-kneed workman in the trade. The right absolutely to govern the terms of membership and the conditions of reinstatement is one that labor unions cannot afford to surrender.

The tendency of labor unions in this country is toward a fuller democracy in the management of their affairs; the adoption of the referendum is one of the evidences of this tendency. Incorporation would certainly result in the centralization of control. This effect alone of incorporation would destroy the unions. Your rank-and-file labor unionist feels that he is an important part of the organization, and so he is. Attempt to restrict his powers in this particular and he quits.

Labor's belief that law and the courts are for the benefit of the owners of wealth may be deemed by many unwarranted, but are there not grounds for the belief? Organized labor has secured the passage of laws in its interest; many of them have been declared unconstitutional by the courts. At best, law is costly, and the laborer, individually and collectively, is too poor to indulge in the luxury.

For these and other like reasons, the labor union is opposed to exchanging the old and fairly successful way of fighting its battles for court-rooms generally presided over by judges whose training and environment make them unfitted to see labor's cause through sympathetic glasses.

Labor in England just now is having a taste of recognition in the courts. The Taff Vale Railroad Company is suing the Amalgamated Society of Railway Servants for damages incurred during the strike of 1900. English jurists say that the case involves the justice of strikes, the right of employees to strike. What the decision will be it is hard to say; but if such a case came up in this country, and the courts decided that strikes were never justifiable, organized labor would pay with its life for its standing in law.