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Unionizing America's Prisons - Arbitration and State-Use

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UNIONIZING AMERICA'S PRISONS—ARBITRATION AND STATE-USE

> [O]ne first step to take with respect to the prison system is to mute talk of rehabilitation and concentrate on another somewhat different question: how much harm is the system doing and how much harm can we stop?[1]

Attempts to answer Dean Paulsen's question have resulted in cries for sweeping reforms.[2] Even among those who desire eventual abolition of the prison system,[3] it is recognized that there exists a need for immediate changes in certain aspects of the present prison structure. Prisoner employment has become one of the most critical problem areas needing improvement. Enforced idleness, low wages, lack of normal employee benefits, little post-release marketability, and imposition of meaningless tasks are all examples of present harms existent in American prisons.[4] At various penal institutions throughout the country, prisoners, ex-convicts and other persons are organizing prisoner labor unions[5] as a possible means of securing improved employment conditions. An examination of the demands made by such unions illustrates the need for a general restructuring of the marketing and manufacturing of prison goods.

THE PRISONER AS A PUBLIC EMPLOYEE

Courts no longer consider the prisoner a "slave of the state."[6] The

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1. Paulsen, *Prison Reform in the Future—The Trend Toward Expansion of Prisoners' Rights*, 16 VILL. L. REV. 1082, 1083 (1971).

2. *See, e.g.*, AMERICAN FRIENDS SERVICE COMMITTEE, STRUGGLE FOR JUSTICE (1971).

3. *Id.*

4. [S]ometimes two or three inmates are assigned to do a task that would require only one worker in private industry. . . . In all prison systems idleness still obtains for a large part of the inmate population.

. . . Skills learned by the inmates are seldom marketable when they are released. . . . The work done . . . produces skills that can be applied only by men who have returned to prison.

. . . The whole operation lacks efficiency, incentives, production norms and the complex of operational goals and attitudes that are the hallmark of successful industrial endeavor.

National Council on Crime & Delinquency, *Policy Statement on Compensation of Inmate Labor*, 34 AM. J. CORRECTIONS 42, 42-43 (1972) [hereinafter cited as *Policy Statement*].

5. *See* notes 52-58 *infra* & text accompanying.

6. The prisoner is [not] a temporary "slave of the State," . . . and prison officials are not now such masters of their own domain as to be free of . . . [constitutional] restraints.

Gilmore v. Lynch, 319 F. Supp. 105, 108 (N.D. Cal. 1970). *See also* Holt v. Sarver, 309 F. Supp. 362 (E.D. Ark. 1970), *aff'd*, 442 F.2d 304 (8th Cir. 1971). In *Holt*, the court declared Arkansas' incarceration system to be violative of the eighth amendment's pro-

judicial standard with regard to prisoners' rights is that "[a] prisoner retains all the rights of an ordinary citizen, except those expressly, or by necessary implication, taken from him by law."[7] Therefore, it would appear that the prisoner has the right to organize if (1) ordinary citizens have such a right and (2) the right has not been expressly, or by necessity, taken from him by the state.

Prisoners are presently seeking rights comparable to those of ordinary citizens who are employed by the state.[8] The argument over recognition of prisoners as public employees centers on the question of whether a prisoner can properly be termed an "employee." The main objection to recognition is that prisoners do not voluntarily enter into their work relationships with the state.[9] Proponents of recognition would remove volition as the sole factor and concentrate on the total character of the work relationship;[10] if work performed by a nonprisoner would be classified as "employment," it ought to be similarly defined when done by a prisoner.[11] This latter approach seems to be more in line with modern

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hibition against cruel and unusual punishment. The system consisted of two work farms where inmates were forced to labor regardless of the weather and without adequate clothing. Prisoners were also forced to work for friends of the wardens and members of the parole board. For a discussion of *Holt* and the possible role of the eighth amendment in prisoners' rights litigation, see Comment, *The Role of the Eighth Amendment in Prison Reform*, 38 U. CHI L. REV. 647 (1971).

7. Coffin v. Reichard, 143 F.2d 443, 445 (6th Cir. 1944), *cert. denied*, 325 U.S. 887 (1945). For more recent cases applying this standard, see Cruz v. Beto, 405 U.S. 319 (1972) (right to free exercise of religion and to petition the government for redress of grievances); Nolan v. Fitzpatrick, 451 F.2d 454 (1st Cir. 1971) (right to communicate with the press); Sostre v. McGinnis, 442 F.2d 178 (2d Cir. 1971) (right to freedom of speech); National Prisoners Reform Ass'n v. Sharkey, No. 4884 (D.R.I. April 28, 1972) (right to freedom of association); Fortune Soc'y v. McGinnis, 319 F. Supp. 901 (S.D.N.Y. 1970) (right to receive literature).

8. Memorandum on Behalf of Union, *In re* The Prisoners' Labor Union at Greenhaven & The Dep't of Correctional Servs. of the State of N.Y. & The Greenhaven Correctional Facility, No. C-0794 (N.Y. State Public Employment Relations Bd., filed Sept., 1972) [hereinafter cited as Memorandum on Behalf of Union]. *See also* Comment, *Labor Unions for Prison Inmates: An Analysis of a Recent Proposal for the Organization of Inmate Labor*, 21 BUFFALO L. REV. 963, 968-69 (1972) [hereinafter cited as *Inmate Labor*].

9. *See, e.g.*, Memorandum for Respondent at 21-25, *In re* The Prisoners' Labor Union at Greenhaven & The Dep't of Correctional Servs. of the State of N.Y. & The Greenhaven Correctional Facility, No. C-0794 (N.Y. State Public Employment Relations Bd., dated Sept. 8, 1972).

10. Memorandum on Behalf of Union, *supra* note 8, at 16-21.

11. Determining the employment status of prisoners in states which have public employee bargaining statutes can be accomplished by reference to the statutory definition of public employee. For an example of this technique, see Memorandum on Behalf of Union, *supra* note 8. *See also Inmate Labor*, *supra* note 8, at 966-68.

In states without public employee bargaining statutes, the employment status of prisoners will have to be implied from other laws. For example, Indiana does not have a public employee bargaining law, but it does have legislation providing for a merit system of promotion for state employees. IND. CODE § 4-15-2 (1971), IND. ANN. STAT. § 60-1301 (Supp. 1972). Prisoners are not within the classification of employees covered

legal trends in prisoners' rights.[12] The right of prisoners, as public employees, to join or form a union exists only if ordinary public employees enjoy such a right. Two circuits have upheld this right.

In *McLaughlin v. Tilendis*,[13] the Seventh Circuit held that a complaint which alleged that the plaintiffs had been dismissed or not rehired because of membership in a teachers union stated a cause of action for which relief could be granted under the Civil Rights Act of 1871.[14] In so doing, it overruled the lower court's finding that there was no first amendment right to join a labor union. In *American Federation of State, County & Municipal Employees v. Woodward*,[15] the Eighth Circuit found that public employees have a constitutionally protected right to join a labor union.[16] The court reasoned that

> [t]he First Amendment protects the right of one citizen to associate with other citizens for any lawful purpose free from governmental interference. . . . [T]hus [u]nion membership is protected by the right of association under the First and Fourteenth Amendment.[17]

Thus, prisoners, like other public employees, have a constitutional right to organize. However, it has been suggested that such a constitutionally protected freedom may be restricted if a "compelling state interest centering about prison security, or a clear and present danger of breach of prison discipline, or some substantial interference with orderly institutional administration"[18] is demonstrated.

To be sure, prison officials have the right to restrict inmate activities which threaten the security of the institution.[19] The means of regulation, however, must be the least restrictive possible.[20]

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by the merit system, but they are designated as unclassified employees. IND. CODE § 4-15-2-7 (1971), IND. ANN. STAT. § 60-1308(a)(2) (1961). This designation only means that prisoners are excluded from the merit system. It does not mean that they are not public employees; indeed, the fact that they are mentioned at all suggests that they are public employees.

12. Prisoners rights litigation, *see* note 7 *supra*, has shown that courts will no longer allow imprisonment to justify any treatment of the prisoner. The judiciary has begun to delve into the rationale behind prison regulations; a recital of "security" or "rehabilitation" as the purpose of such regulations will not automatically justify them. *See* notes 18-23 *infra* & text accompanying. Similarly, the courts should not look to the volition factor as the sole determinant of the public employee issue.

13. 398 F.2d 287 (7th Cir. 1968).

14. 42 U.S.C. § 1983 (1970).

15. 406 F.2d 137 (8th Cir. 1969).

16. *Id.* at 138.

17. *Id.* at 139.

18. Fortune Soc'y v. McGinnis, 319 F. Supp. 901, 904 (S.D.N.Y. 1970). *See also* Palmigiano v. Travisono, 317 F. Supp. 776 (D.R.I. 1970).

19. Roberts v. Pepersack, 256 F. Supp. 415, 429 (S.D. Md. 1966).

20. Barnett v. Rogers, 410 F.2d 995 (D.C. Cir. 1969); Wright v. McMann, 321

> "Security" or "rehabilitation" are not shibboleths to justify any treatment. . . . When it is asserted that certain disabilities must be imposed to these ends, courts may still inquire as to the actuality of a relationship between means and ends.[21]

As a result, prison officials must be able to articulate a rationale which goes beyond administerial inconvenience, before courts will determine that inmates have no right to organize.[22] Any limitation on prisoners' rights will be struck down whenever

> the prison authorities have not shown such remarkable success in achieving any conceivable penological end by means which entail the abridgment of these constitutional guarantees as might make their denial seem worthwhile.[23]

Problems in Adapting the Labor Union Concept to Prisons

Since joining a union is a constitutionally protected right, it becomes necessary to consider how private sector rules governing labor-management relations must be altered to make the union viable within a prison environment. The growth of the union movement within the public sector has shown that many of the considerations and techniques at work in private labor relations cannot be blindly applied to the public sphere.[24] Of course the specific ways in which the union concept will be adapted to a particular prison situation will vary depending, in part, on existing state mediation or arbitration services and general state practices for resolving public employee disputes. In states which have laws concerning public employee collective bargaining, the extent of the bargaining obligation and its applicability will have to be determined by examining the applicable statute.[25] In states without such legislation, the obligation of the prison officials will be much the same as that of any other state agency.

F. Supp. 127, 132 (N.D.N.Y. 1970). *See also* Note, *Less Drastic Means and the First Amendment*, 78 Yale L.J. 464 (1969).

21. Landman v. Royster, 333 F. Supp. 621, 645 (E.D. Va. 1971).

22. *Cf.* Jackson v. Godwin, 400 F.2d 529 (5th Cir .1968).

23. 333 F. Supp. at 644.

24. Essential differences between the functioning and goals of the private and public spheres necessitate the development of a different approach to collective bargaining in the latter. Among the factors which may require particular attention in the public sector are: (1) the impact of a public employee strike; (2) the fact that public services do not have a market price; and (3) the possibility that the immediate employer is without power to meet certain demands.

> Everyone acknowledges that public sector collective bargaining lacks the realism of private sector bargaining as a result of the required continuity and essentiality of public service.

Zack, *Ability to Pay in Public Sector Bargaining*, N.Y.U. 23d Conf. Lab. 403, 425 (1971) [hereinafter cited as Zack].

25. *See Inmate Labor, supra* note 8.

Thus, in a state which has had no previous practice of bargaining collectively with its public employees, prison officials would be under no obligation to bargain with a prisoners union. However, a prison official should not refuse to bargain simply because of the absence of statutory authorization, since

> the current attitude is not that collective bargaining has an uncertain status unless it is specifically authorized, but that the right to bargain collectively is an attribute of every critizen to whom it is not denied by statute.[26]

The most obvious problem in adapting the labor union concept to prisons is finding an alternative to the strike as a means of resolving disputes.[27] Undoubtedly, just as public employees have no right to strike,[28] prisoners unions will likewise be deprived of that right.[29] However, even in the face of statutory prohibitions, public employees continue to employ the strike as a bargaining technique. Thus, if a prison system is to avoid strikes, it must provide meaningful alternatives. To be effective, these alternatives must include a final resort to binding arbitration.[30] A less restrictive method of dispute resolution might be provided as an intermediate step. Still, the inherent strength of prison management's position, coupled with the fact that a strike would be ineffective since prison labor is often unessential, necessitates assurance that a final determination be made by an independent arbitrator.[31]

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26. 1966 OP. IND. ATT'Y GEN. 158. *See also* Indianapolis Educ. Ass'n v. Lewallen, 71 L.R.R.M. 2898 (S.D. Ind. June 19, 1969).

27. In addition to the strike, exclusive representation, the scope of negotiable items, and the determination of a bargaining unit will present problems different than those envisioned by labor laws applicable to the private sector. However, finding an alternative to the strike is the most basic issue which must be considered.

28. Sviridoff, *The Role of the Unions in the 1970s,* N.Y.U. 23d CONF. LAB. 39, 43 (1971).

29. The justification for denying the right to strike to public employees is that the public is entitled to an uninterrupted flow of goods and services. This justification would seem to have little applicability to prison industries. Nevertheless, political considerations will probably move authorities to deny prisoners unions the right to strike.

30. The efficacy of this type of provision in resolving community disputes is discussed in Haughton, *Mediation of Community Disputes and the Labor-Management Model,* N.Y.U. 23d CONF. LAB. 23, 34 (1971) [hereinafter cited as Haughton].

> [T]he parties [to a community dispute] . . . commit themselves to certain settlement only when they voluntarily agree to final and binding arbitration of unresolved issues.

Id.

31. The imbalance of power may even preclude negotiation or submission to arbitration. Ronald Haughton, President of the Board of Mediation for Community Disputes, has stated, "[T]he mediation and peaceful negotiation of community disputes has been generally most useful when there has been some sort of balance of power. . . ." Haughton, *supra* note 30, at 27. It is true that persons in positions of authority have often been unwilling to relinquish rights until confronted by a group with power. However, a group may have bargaining power by virtue of favorable public opinion or out-

A prison arbitrator will face certain bargaining difficulties not found outside of the prison environment. Because the prison is a total institution, arbitration of what may seem to be merely conditions of employment, will necessitate giving consideration to other penological goals. For example, a prisoner union may wish to bargain about training programs in order to make them more viable for post-release employment; officials may see the program as a rehabilitation program which is only secondarily a condition of employment. Initially, the arbitrator must resolve this issue to determine if the demand is a proper subject for bargaining. Also, the prisoner union may wish to bargain about maximum working hours. If officials believe that each inmate must work more hours in order to maintain a viable institution, then the prison authorities may characterize the hours as a custodial consideraton. Undoubtedly there are many other similar situations which will require added expertise on the arbitrator's part.[32]

THE PRISONER'S DEMAND FOR EQUITABLE WAGES: ECONOMIC & POLITICAL CONSIDERATIONS

While prisoners unions might be seen as a vehicle for arbitrating all disputes between inmates and administrators,[33] their expressed purpose has been to secure equitable wages and improved employment conditions.[34] Practically speaking, a prisoner's wages must be derived either from state subsidies or from income yielded by marketing prison products.

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side support. *Id.* at 34. Thus, outside support for prisoner unions and a desire on the part of prison officials to avoid violent confrontations may serve as a substitute for internal strength of inmate unions.

32. Similarly, the arbitrator or mediator must possess different skills than the private sector arbitrator. It will not be sufficient to be a "placid neutral mediator," Haughton, *supra* note 30, at 34, since the mediator "must function to interpret positions and problems of each party to the other, and to convey understanding of power relations from one to the other." *Id.* at 35. In fact, the prison arbitrator may need to understand the issues involved more fully than does the private arbitrator because he may be called on to advocate and innovate solutions to disputes. Moreover, the arbitrator will have a public responsibility, and, therefore, he must present resolutions which are politically and economically viable. *Cf.* Zack, *supra* note 24, at 418.

33. *See* Judge Oakes' concurring opinion in Goodwin v. Oswald, 462 F.2d 1237 (2d Cir. 1972).

34. *See* The Outlaw: Journal of the Prisoners Union, Nov.-Dec., 1972, at 1, col. 3 [hereinafter cited as The Outlaw]; Letter from Richard A. Greenberg, Barbara A. Shapiro, Lewis B. Oliver, Jr., and Lawrence D. Ross to members of the Prisoners Labor Union at Greenhaven, Oct. 10, 1972 (a copy of which is on file at the offices of the Indiana Law Journal); Address by a member of the Prisoners Solidarity Committee, Midwestern Conference on Women in the Law, at University of Michigan, Nov. 11, 1972. However, it has been suggested that the goals of the United Prisoners Union "encompass the goals of a great many of the groups which together comprise the 'oppressed' class." *Inmate Labor, supra* note 8, at 975. Nevertheless, the United Prisoners Union also advocates payment of minimum wages and other traditional labor benefits. United Prisoners Union, The Bill of Rights of the Convicted Class, Art. III, § 2 (1971) (a copy of which is on file in the offices of the Indiana Law Journal).

The average inmate in the United States receives from ten to sixty-five cents per day;[35] in fact, no prisoner's per day wage rate equals the federal hourly minimum wage.[36] The likelihood that subsidies bringing these wages up to an equitable level will be assumed by already overburdened state and federal budgets is minimal.[37] Therefore, the products of prison labor must be able to support inmate wages.

It seems highly unlikely that the present monopsonist, governmental consumption of prison products could support such wage payments.[38]

> For many kinds of manufacture, the size of the State-use market or the amount of inmate labor available, or both, do not suffice to support the size of the plant needed to achieve the standards of cost reduction and quality control which can be attained by a large plant selling mainly to the private sector of the economy.[39]

Monopsony was not always the case: in 1924 all but five states sold prison-made goods on the open market.[40] Soon, however, irate labor unions exerted political pressure against the sale of prison-made goods on the open market.[41] Prison products also encountered opposition from private industry.[42] Under these pressures from labor and management, Congress passed legislation[43] which resulted in the present state-use

35. *Policy Statement, supra* note 4, at 43.

36. *Id.*

37. Assuming a forty-hour work week, and compliance with federal minimum wage rates, it would cost the Federal Bureau of Prisons approximately 81.5 million dollars to pay the wages of inmates in federal prisons. In addition, it would cost state penal authorities approximately 730 million dollars to pay state prisoner wages. These figures were derived from Bureau of Prisons statistics contained in DEP'T OF JUSTICE, BUREAU OF PRISONS, BULL. No. 47, NATIONAL PRISONER STATISTICS 2 (1972). The burden which these expenditures would place on federal and state budgets becomes apparent when it is realized that the total federal and state expenditures for correctional institutions in 1969 were 92 million and 1.1 billion dollars, respectively. DEP'T OF JUSTICE, LAW ENFORCEMENT ASSISTANCE ADMINISTRATION & DEP'T OF COMMERCE, BUREAU OF CENSUS, EXPENDITURES & EMPLOYMENT FOR THE CRIMINAL JUSTICE SYSTEM: 1969-70, at 7 (1972).

38. *Cf. Policy Statement, supra* note 4.

39. PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: CORRECTIONS 55 (1967) [hereinafter cited as TASK FORCE].

40. Rodli, *Revolution in Prison Industries,* 6 CRIME & DELINQUENCY 146 (1960) [hereinafter cited as Rodli].

41. JOINT COMMISSION ON CORRECTIONAL MANPOWER & TRAINING, PERSPECTIVES ON CORRECTIONAL MANPOWER & TRAINING 8 (1970).

42. "Whenever . . . private businesses could not sell their goods, political pressure has mounted to prevent prisons from engaging in [competing] enterprises. . . ." TASK FORCE, *supra* note 39, at 54.

43. In 1929, Congress passed the Hawes-Cooper Act, 45 Stat. 1084 (codified at 49 U.S.C. § 60 (1970)), which made prison goods subject to regulation by the state in which they were sold. 49 U.S.C. § 60 (1970). Since states had the power to outlaw the sale of prison goods, the result of Hawes-Cooper was to virtually extinguish the interstate sale of such goods. The 1935 Ashurst-Summers Act, 49 Stat. 494 (codified at 18 U.S.C. §§ 1761-62 (1970)), prohibited transportation of prison goods to states

system. Since the present monopsonist distribution cannot support equitable prisoner wages, meeting the wage demands will ultimately require selling prison products once again on the open market.[45] If prison products are to compete, therefore, prison unions must obtain the support of labor and manufacturing interests.[46] If these interests are hostile the prison industrial system cannot be changed.

Another reason for gaining the support of private industry and labor is that prison unions alone will not be able to establish the requisite balance of power necessary to insure their success.[47] These outside forces would serve as an insulating factor against possible official ire. Moreover, such "friends in high places" could better marshall general public opinion in favor of prisoners' demands.

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where their sale was prohibited, Act of July 24, 1935, ch. 412, § 1, 49 Stat. 494, and required them to be labelled as inmate products, 18 U.S.C. § 1762 (1970). Finally, interstate transportation of prison goods was totally prohibited in 1940. Act of Oct. 14, 1940, ch. 872, 54 Stat. 1134 (codified at 18 U.S.C. § 1761 (1970)). These three acts resulted in the creation of the monopsonist system. *See* Rodli, *supra* note 40.

44. *See* TASK FORCE, *supra* note 39, at 55.

45. However, it has been suggested that some of the disadvantages of the monopsonist system at the state level may be eliminated by cooperation among states. Specifically, it has been urged that several bordering states could band together to form an organization similar to Federal Prison Industries, Inc. (FPI), which coordinates and controls production of goods at all federal prisons. TASK FORCE, *supra* note 39, at 56. While FPI has resulted in quality control, it has not bestowed many benefits on inmates.

> In contrast to the proponents of regional efforts, Professor Lopez-Rey suggests: [I]t would seem more advisable to advocate a closer parallelism between the two kinds of labour [prison and free world] than to suggest the creation of vocational and training programmes which the organization of prison labour, mostly based on the State-use system, can very seldom afford.

Lopez-Rey, *Some Considerations on the Character and Organization of Prison Labour,* 49 J. CRIM. L. CRIMINOLOGY & POLICE SCIENCE 10, 12 (1958) [hereinafter cited as Lopez-Rey].

46. Perlis, *Labor's Position on the Employment of Offenders,* 6 CRIME & DELINQUENCY 138, 140 (1960).

47. However, there need not be formal affiliation with any private union or company. Indeed, such affiliation is opposed by the Prisoners' Union of San Francisco:

> Contact the most progressive labor unions in your area. Explain to them the labor issues involved in our struggle and the desire to form a union. Do not blanketly accept them but rather ask them for advice and help in forming your union. You must maintain your status of a Prisoners' Union. The issues we face are not just limited to labor but rather take into consideration all problems involving our incarceration. Hence help from existing labor unions is helpful but co-option is very dangerous.

The Outlaw, *supra* note 34, at 1, col. 3. The Prisoners' Union also proposes that any supportive non-convict group must be willing to accept convict leadership. *Id.*

> 48. Obviously, public awareness of inmate needs and grievances can be an important means of getting political leaders and correctional administrators to respond. . . . Inmate organizations allying themselves permanently with outside groups may open up channels for communication and create an on-going public role in internal prison affairs.

Note, *Bargaining in Correctional Institutions: Restructuring the Relation between the Inmate and the Prison Authority,* 81 YALE L.J. 726, n.65 (1972) [hereinafter cited as *Bargaining*].

There are at least three reasons why labor and management should not be hostile to prisoners' labor unions. First, since the great majority of prisoners were in the labor force prior to conviction,[49] and hopefully will return to the work force upon release, there is no reason to sever their connections with organized labor. Secondly, prison labor and inmate products do not constitute a threat to outside labor and industry in today's economy.[50] Finally, both industry and labor, as responsible members of society, must realize that the

> counter-productive prison labor system [must] be changed, in the belief that an inmate receiving equitable payment for work performed will be able to provide some support of his family, continue payments on his social security, provide restitution (if this is applicable in his case), make some payment for room and board and save money to assist himself upon his return to society.[51]

CONCLUSION

Attempts to organize prisoners are becoming increasingly commonplace. Organizing is presently occurring in at least six states. In California, the United Prisoners Union claims a membership of over three thousand.[52] California is also the headquarters of the Prisoners' Union of San Francisco[53] and the Prisoners Legal Union at the Men's Colony at San Luis Obispo.[54] In New York, more than half of the inmates at Greenhaven Correctional Facility are said to belong to the Prisoners' Labor Union.[55] The State Prison of Southern Michigan is presently being organized by another Prisoners Labor Union.[56] A request for an election has been made to the Delaware Department of Labor to determine if the Imprisoned Citizens' Union ought to be accorded representative status

49. *See* Lopez-Rey, *supra* note 45, at 14. *See also* TASK FORCE, *supra* note 39, at 3, Figure 2.

50. TASK FORCE, *supra* note 39, at 55.

51. *Policy Statement, supra* note 4, at 43.

52. *Bargaining, supra* note 48, at 749, n.66.

53. Browning, *Organizing Behind Bars,* RAMPARTS, Feb., 1972, at 40, 43.

54. Bass, *Correcting the Correctional System: A Responsibility of the Legal Profession,* 5 CLEARINGHOUSE REV. 125, n.81 (1971).

55. N.Y. Times, Feb. 8, 1972, at 1, col. 2. Two other New York prisons, Wallkill Correctional Facility and Bedford Hills Correctional Facility for Women, have also formed unions which have demanded recognition. As with the Greenhaven union, these unions have filed petitions for certification with the Public Employment Relations Board in Albany. Hellerstein, Greenberg, Shapiro, Eisner & Pochoda, Summary of the History of the Prisoners Labor Union Movement in New York 2 (1972) (unpublished paper on file in the offices of the Indiana Law Journal).

56. The Outlaw, *supra* note 34, at 1, col. 2. *See also* Prisoners Solidarity Committee: Michigan Newsletter, Jan., 1973, at 8.

for Delaware inmates.[57] Similar organizing is taking place in Ohio and Pennsylvania.[58]

The present extent of the prison labor union movement indicates that organization will most likely be attempted at other prisons. Thus, prison officials, judges, and state agencies are going to be confronted frequently with the problem of how to deal with the prisoner labor union. In resolving this problem, the difficulties of applying the labor union concept to the prison, especially in light of the need for a wholesale restructuring of the prison economic system, should not override the benefits that recognition will bring to the prison, the prisoner,[59] and society as a whole.

> [C]orrectional officials [must] seek more peaceful ways of resolving prison problems than the old, ironclad, solitary-confinement, mail-censoring, dehumanizing methods that have worked so poorly in the past. Promoting or at least permitting the formation of a representative agency might well be, in the light of past experience, the wisest course for correctional officials to follow. . . .[60]

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57. 1 PRISON L. REP. 313 (1972).
58. *See Bargaining, supra* note 48, at n.66.
59. For a discussion of the benefits of instituting formal bargaining within prisons, see *Bargaining, supra* note 48, at 751-57.
60. Goodwin v. Oswald, 462 F.2d 1237, 1245-46 (2d Cir. 1972) (Oakes, J., concurring) (footnotes omitted).