

**No. 21**

**The  
YELLOW DOG  
CONTRACT**

**by  
Elliot E. Cohen**

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# THE YELLOW DOG CONTRACT

BY ELLIOT E. COHEN

## *The Menace of the Yellow Dog*

JIM BAGBY, striking miner down in the West Virginia field, summed up the whole business. "Rifles are tough, and machine guns are tough," he said, "and those deputies and gangsters that the company's got in from Pittsburgh are plenty tough—but I guess the boys can handle them. But tougher than them all is this here yellow dog. And let me tell you, boys, if we don't find some way of licking this, it's going to lick us. We've got to lick it, and we're going to lick it, but it's sure got us by the throat for fair. It's only a piece of paper, but it's deadlier than a snake. Yessir, between a yellow dog and a rattlesnake, give me a rattler any day!" . . .

When the worker stands alone, he is helpless. His only chance to protect the little he has and to better his life lies in his power to organize. The bosses know this. Therefore, they have invented many weapons to undermine and smash workers' organizations. Certainly one of the most dangerous is that new menace, every day more widespread, the yellow dog contract. Yes, Jim Bagby was right. It is only a piece of paper, but it is deadlier than a snake!

The yellow dog contract is an agreement the company forces each individual worker to sign, on the penalty of not getting the job (or if he already has the job, of losing it), binding the worker *to surrender his right to organize*.

The simplest form of yellow dog binds the worker not to join a union. More complicated forms do not mention union membership at all, but pledge the worker to accept certain (always lower) wages, long hours, and bad shop conditions without protest for the whole time that he works for the company. But, no matter how worded, all yellow dogs serve the same purpose—to isolate the worker from the union, leaving him single-handed at the mercy of whatever wages and terms the company dictates.

In the face of the spread of this type of contract—which, it is estimated, now involves at least 1,250,000 workers in this country—the unions must fight for their very life. The organizer will find old members torn away from the unions and approach to new members blocked; he will find himself forbidden by the court to call a strike or fight in any way for better conditions. Worst of all, the yellow dog aims to break the spirit of the worker by adding to the fear of losing his job the fear of running afoul of the law. The effort is made to make him feel that if he incurs the slightest displeasure of the boss, he might not only be fired, but also fined and sent to jail. The yellow dog attempts to so terrorize the worker by the overhanging threat of unknown penalties that he becomes not only afraid to have any dealings with the union, but even to be seen with a union man or to let the word “union” cross his lips.

### *Putting Teeth in the Yellow Dog*

Yellow dogs did not become a serious menace until 1917. The bosses used them at various times during the last fifty years, but with uncertain success. In 1870, in the textile industry in Massachusetts, the employers broke the weavers' union with yellow dogs. But the spinners' union fought back and survived, claiming the contracts were not binding, since the workers had signed against their will, to keep their families from starving. Yellow dogs appeared in labor struggles in coal mining in the Hocking Valley district, Ohio, around 1884, and on the railroads, about the same time.

But the unions were fairly strong in the last decades of the century; they fought back the yellow dog with strikes. But the laws they got passed against the yellow dog were declared unconstitutional by the courts. Still the use of the contract remained rather rare in those days.

In 1917, the U. S. Supreme Court handed down the Hitchman decision, approving the granting of injunctions to protect the yellow dog. This meant that workers or union organizers could be hauled up on charges of “contempt of court,” not only for violating the terms of the yellow dog, but for challenging it in

any way, and heavily fined or sent to prison. This action of the court put teeth in the yellow dog!

In handing this new, perfected union-wrecking weapon to the bosses the courts were only playing their old rôle of pretending "to hold the scales of justice even" while actually *lending their best efforts to arming the employers and disarming the workers.*

When unions arose more than a hundred years ago the courts did their best to stamp them out at their birth, by declaring any combination of workers a "criminal conspiracy." When, after struggle, the workers of Massachusetts in 1840 won recognition of their right to combine "for lawful purposes and by lawful methods," some more subtle weapon than the criminal law had to be forged. Thus arose the injunction in the labor field—an order given by the court to a boss to restrain the union from engaging in some kind of activity which the employer complains, and the court agrees, is "illegal." Violation puts the worker in "contempt of court," for which he can be fined or sent to jail. Since at one time or another courts have declared almost all kinds of union activity "unlawful of purpose or method," and issued injunctions against them, most labor cases in the courts in recent years have centered around injunctions. (*The Injunction Menace*, Charlotte Todes, International Pamphlets, No. 22.)

Among "unlawful purposes," hence subject to restraint by injunction, various courts have considered the following: organizing strikes; strengthening the union; the closed shop (Mass.). Among "unlawful methods," in one state or another, nearly every conceivable action has come under the ban: assembly, distribution of leaflets, boycott, picketing.

What the Court did in the Hitchman case was simple. It added to the long list of "unlawful purposes," *all activity interfering with individual employment contracts.* By this act it extended the full protection of the injunction to the yellow dog contract. And with this one stroke it suddenly increased a hundred-fold the menace of this fifty-year-old "legal" union-wrecking tool. For the practical effect of this decision was to serve notice on employers all over the country that they could put in yellow dogs

and expect court protection in their use. The bosses were not slow to take the hint. Yellow dogs spread like a plague.

*Chief Varieties of the Yellow Dog: Frankly Anti-Union Contract*

The recent popularity of the yellow dog in the employers' bag of anti-union weapons, which includes such devices as the labor spy, the frame-up, the company-thug, and the blacklist, is not hard to explain. Compared to these methods, it is simple, inexpensive, and less troublesome to maintain.

Yellow dog contracts in current use are of three main varieties: (1) Openly anti-union contracts; (2) "open shop" contracts; (3) company union contracts.

The most notorious yellow dog of the frank anti-union type, and the form most widely used, especially in the West Virginia coal fields, is the Hitchman Coal & Coke Co. contract against the United Mine Workers of America in the days before 1917, when it was still making some show of fight against the companies. Here it is in full:

I am employed by and work for the H. C. & C. Co. with the express understanding that I am not a member of the U. M. W. A. and will not become so while an employee of the H. Co.; that the H. Co. is run non-union and agrees with me that it will run non-union while I am in its employ. If at any time I am employed by the H. Co. I want to become connected with the U. M. W. A. or any affiliated organization, I agree to withdraw from the employment of said company, and agree that while I am in the employ of that company, I will not make any efforts amongst its employees to bring about the unionizing of that mine against the company's wish. I have read the above or heard the same read.

Note that to give the appearance of mutual gain the contract hypocritically pretends that it is at the worker's special request—to do him a favor—that the company agrees to run non-union!

Some anti-union contracts go further, the worker signing in addition *to have no dealings, communications or interviews whatsoever with any agents or members of any labor union.* Other contracts bind the worker *to leave the district* when he leaves, for any reason, the employ of the company.

## *"Open Shop" Contracts*

A typical "open shop" yellow dog was that forced on the employees of the Indianapolis Street Railway Co., in 1914. The document obligated them to obey all rules, present and future, that might be made by the company; not to engage in any strike activities; to submit all grievances to arbitration *individually* and without consultation or agreement with other workers or the union. In return, the company agreed to run "an open shop" and not to lock-out or discharge the men "*wholly* without cause." Theoretically, this contract left the worker free to join a union. But what use would a union be when the worker had already signed away his right to be represented by it in discussing wages, working conditions, and grievances with the company? Nor was there any protection in his job from the "wholly without cause" clause, since the company was the sole judge, and could rig up any pretext it wanted to fire him.

With the yellow dog in effect, wages on the Indianapolis Street Railway went down to 36 and 37 cents an hour by 1926, and finally the employees requested the union to help them organize. When two organizers appeared, Judge Baltzell granted an injunction so strong that the organizers were jailed for contempt of court for appearing at a meeting and reading the injunction!

## *Company Union Contracts*

In company union contracts the yellow dog is used to bind the worker to membership in a "company union," or fake union controlled by the company itself. Sometimes the contract forbids the worker to belong to any other union, but usually not, since he is so closely bound to the company union as to make specific prohibition unnecessary.

The Union Pacific Railroad yellow dog, forced on the workers in 1922, provided that hiring automatically admitted the worker to membership in the company union and bound him to its rules. Under the contract the worker authorizes the company union to represent him in all matters relating to wages and working conditions. The worker agrees not to join any other union, and

if he does it means he resigns from his job. A final touch provides for a check-off—automatic deduction of union dues from the pay envelope—to give the appearance of a real union!

When the Interborough Rapid Transit Co. of New York formed its company union, the Brotherhood of I. R. T. Co. Employees, to beat the efforts of the Amalgamated Association of Street and Electric Railway Employees to organize its men, the I. R. T. forced each worker to enter into an individual contract with the company, agreeing to accept Brotherhood rules and promising not to join any "outside" union. Violation meant expulsion from the company union and automatic discharge from the company.

The Chicago, Rock Island and Pacific Railway yellow dog went further, forbidding not only membership in any labor union but even forbidding any *association* with labor union members. Thus a worker stopping at an open-air meeting on his way home from work had automatically fired himself!

### *The Yellow Dog in Action: In the Coal Fields*

The yellow dog is very prevalent in coal mining, especially in the bituminous fields; some estimate that as many as 40% of the mine workers are involved.

Yellow dog trouble started in the new West Virginia field, which was for the most part run by operators who had left the Central Competitive field—Western Pennsylvania, Indiana, Ohio, and Illinois—to escape union conditions. The Hitchman Coal and Coke Co. of West Virginia had beaten one effort to organize the company. But in 1907, feeling the competition of cheap non-union coal, and realizing that its own survival was threatened again, the union sent in an organizer, who succeeded in getting a few employees of the company to sign with the union.

The Hitchman Co. struck back by beginning suit for an injunction to restrain the union from persuading its workers to break their contract. The injunction was granted despite the fact that it was not until two months *after* the suit began that the company introduced the yellow dog contract quoted above, and required their workers to sign it. This was the same injunction that the Supreme Court finally upheld in 1917.

The Supreme Court decision bore fruit in the years after the war. Still another effort was made to organize the non-union fields in southern West Virginia. After a struggle in which martial law was declared and the federal troops sent in, the strike, undermined by Lewis policies, was beaten back by temporary injunctions protecting yellow dogs. These injunctions were later consolidated in the famous Red Jacket cases.

The yellow dog spread into the Central Competitive field in 1925. Operators and union in this organized field had, after a series of strikes, signed the Jacksonville Agreement, to run from 1924 to 1927, at an agreed wage scale. But competition with the non-union fields in West Virginia and eastern Kentucky led some of the operators into an effort to beat wages down below the Jacksonville wage scale. The first company to break the agreement was the Pittsburgh Coal Co. In 1925 it closed its mine, and then offered to take its workers back only on condition that they signed a yellow dog, asking (1) to be reemployed on the lower wage scale of 1917, (2) to be represented by the newly-formed company union in all "negotiations."

Other companies followed the example of the Pittsburgh Coal Co., and later put into effect lower wage scales in their mines, protected by yellow dogs. When strikes followed they brought in scabs protected by yellow dogs, and secured injunctions against the unions even more drastic than those of the Hitchman case. For example, when the company moved to evict strikers living in company tenements, an injunction was granted restraining the union from putting up bonds guaranteeing the payment of rent, and even from appealing eviction proceedings in the state courts. (See also *Labor and Coal*, by Anna Rochester, pp. 99, 203-208, International Publishers.)

### *In the Shoe Industry*

The yellow dog was brought into the shoe industry, not to prevent unionization, as in the mine fields, but to free the employer from unions he had long dealt with. In Lynn, the Shoe Manufacturers' Association had signed an agreement with the Amalgamated Shoe Workers of America in 1922, to run until



1924. But by 1923 many of the companies in the Association had closed down, in violation of the agreement, and many others had moved out of Lynn to escape the union. Finally one company reopened and offered to take back former employees if they would sign individual contracts. In this yellow dog the worker was forced to agree that the company was to be the sole dictator of policy regarding terms, wages, employment and discharge; consent to a 15% wage cut; and repudiate the union. The union was restrained by an injunction from fighting the yellow dogs.

Other employers followed the example of this company, until the Manufacturers' Association was able to put over the 15% cut even in the remaining union shops. After this the disintegration of the union was rapid. Many more bosses repudiated it, and introduced yellow dogs, some of which even provided for the posting of a \$100 surety bond, to be forfeited by the worker if he violated the terms of the contract.

### *In the Hosiery and Metal Industries*

In the full-fashioned hosiery industry a Philadelphia concern was one of the first to introduce the yellow dog. Another company, against whom the union had struck for introducing the one-worker, two-machine system, broke the strike with company spies and put in yellow dogs. Now several companies in Allentown, Pa., also have these contracts, protected by drastic injunctions. Organizers have been arrested and fined for distributing union literature. Some of the contracts prohibit workers from working at their skilled trade within 100 miles of the town after leaving their job. Another forbids the worker from going to any hosiery concern, either as employer or worker, for two years after leaving the company. Another prevents any *discussion* whatsoever of the contracts.

In the metal and machine trades, the United Shoe Machinery Corporation in Beverly, Mass., brought in the yellow dog to break up the machinists' union to which all its employees belonged, so it might run non-union. Faced with dissolution if its members signed, the union called a strike. The company secured an injunction restraining the union from helping the

strike in any way, from paying strike benefits, or from persuading any one not to sign the contracts. Confirmed by the highest Massachusetts courts, this injunction set a precedent in Massachusetts under which workers have since been prohibited from striking against being forced to give up their union.

### *Hypocrisy and Fraud of the Yellow Dog*

The peculiarly offensive quality of the yellow dog is its combination of hypocrisy and oppression. As clearly an anti-union device as the labor spy, the company-thug, the frame-up, and the blacklist, it wears a fake gloss of high-legality and kindly concern for the rights of the worker to mask its essential venom. It pretends to be a contract; but, even judged by the standards of the capitalist courts themselves, it is certainly no such thing. A contract is supposed to possess some of the following elements: (1) It is between "equals"; (2) it is entered into without pressure of force or coercion; (3) it represents a fair exchange of values, a real give-and-take.

In the yellow dog, are the parties equal, either in position or power? Absurd! On one side, there is a single, isolated worker, looking for a job or trying to keep one, unable to take a chance of losing his job or of waiting too long before finding one. On the other side, an employer, or a company, sometimes an employers' association controlling a district or a large section of an entire industry, very well able to do without the services of any single individual, able, with the whole labor market to pick from, to dictate its own terms.

As for "liberty of contract," for the worker more often than not it consists in the liberty to take the job on any terms he can get, or get no job; to sign a yellow dog, no matter how oppressive, or starve. Sometimes there is the threat of a blacklist; if he does not sign he will have to move his family to another district. Usually the contract is introduced when the union is weakest, in times of depression, or after a strike. Often the worker is suddenly called to the employment office, isolated from his fellow workers, and ordered to sign "on the dotted line" without opportunity to read the terms or to discuss them with

his family or fellow workers. Sometimes the threat of eviction hangs like a sword over his head, as in this typical case in Kentucky. A miner, living in a company-owned house, had refused to sign a yellow dog, and been discharged. The following day he went to look for another house to move into. His wife was sick at the time, with a baby a few days old. There was snow on the ground. When he returned home that evening he found that the mine superintendent had put his wife, child and all the furniture and household goods out on the road. Orders were sent to neighbors that any family offering any assistance whatsoever to the evicted family would receive the same treatment. With no union behind him the miner was forced to yield and sign the contract. Often the worker is handed a contract to sign in "the free atmosphere" of the knowledge of company-thugs stationed outside the plant, armed with automatics, machine guns, riot guns, rifles, and tear bombs.

As for "fair exchange," what give-and-take is there when, for instance, the worker signs away his valuable right, which he needs and wants, of the protection of the union in matters of wages, conditions, and grievances—in return for the employer signing away, what *he* never wanted, his "right" to deal with the union? Or the worker signs away his right to strike, his strongest weapon, while the boss does *not* give away *his* right to discharge—for there is always some loophole of escape, some phrase which enables him to fire the worker when he wants to.

Clearly these contracts are transparently oppressive and tyrannical, crude weapons of the bosses in their attempt to prevent the workers from joining militant unions. Yet it is these same hypocritical, fraudulent contracts that the courts have conspired to saddle on the workers, have thrown the whole weight of their legal hokus-pokus to protect, and marshalled all the power of police and prison to enforce! This is the way courts normally function against the workers under capitalism.

### *Fighting the Yellow Dog*

How is the worker to fight the throttling oppression of the yellow dog? For fight it he must, with all the weapons at his

command, or be driven by the employers into helpless slavery.

Attacking the yellow dog through the courts and through the legislatures—the two time-worn lines of attack—offers the worker at best temporary relief, and usually not even that. So it is the worst possible policy to wage battle chiefly in these legal arenas, as the old unions have done, at such rare times as they have chosen to do any fighting at all.

Workers fighting yellow dogs in the capitalist courts face all of the common handicaps of the working class at the “bar of justice”—limited funds for expensive court proceedings, a capitalistic legal system designed to protect profits and property rights against workers’ rights, hostile judges. In addition, they face the weight of a whole series of yellow-dog decisions and precedents, all of which are sweepingly unfavorable to labor.

*Backed by mass protest* the workers must wage struggles against the yellow dog in the courts. A victory may be won that may be very useful in some particular strike situation or labor struggle. And even when a legal action meets complete defeat, it has been worth while, if it has succeeded—as well-presented, well-fought trials, accompanied by militant mass pressure, always do—in exposing to the working class the rôle of judges as obedient servants of the employers, and in demonstrating the class character of capitalist justice.

Trusting to legislation to destroy the yellow dog is fostering an illusion. Since the government is but the direct agent of the capitalist class, legislative bodies will use all possible tactics to resist the passage of any laws favorable to labor. And since all laws must in the end be approved by the courts, such labor concessions as workers may wrest from the legislatures the courts soon wipe off the books again.

In the late nineties, labor succeeded in driving through a series of state laws, and a federal act, outlawing the use of yellow dogs as a crime. But in 1903 the federal act was declared unconstitutional, as a “deprivation of constitutional rights,” by the Supreme Court, and in 1915 a Kansas law met the same fate.

Later attempts, like the federal Clayton Act of 1914, took the form of restricting the right of courts to grant injunctions to

protect the yellow dog. The A. F. of L. bureaucrats called it "Labor's new Magna Charta!" This Clayton Act was passed, as were a number of state laws like it, including an anti-yellow dog statute in Massachusetts, but they have all been castrated by the courts.

The latest form is the so-called anti-injunction law that takes the line that yellow dogs are "against public policy." After ten years spent in fiddling around in one committee after another in Congress, one such bill "to amend the Judicial Code and define and limit the jurisdiction of courts sitting in equity" was finally passed by Congress and signed by Hoover in March, 1932. In the debate in Congress, even the advocates of this much heralded measure admitted that it was so full of loopholes that it would not interfere with the fundamental powers of the courts to issue injunctions or to protect yellow dogs. The Attorney-General of the United States has already knifed the bill in the back by issuing a report doubting the constitutionality of the act. This is an open invitation to the notorious Hoover injunction judges to pick flaws in it, and set it aside.

### *Militant Organization Will Beat the Yellow Dog*

For real and lasting security the worker must look beyond appeals to capitalist courts and legislatures. For substantial advance in the struggle against the yellow dog, the worker must look to the one mighty, unconquerable weapon he has—*the power of organization*. The struggle between the bosses and the workers boils down to a question of relative strength. Alone the workers are helpless; but if they build up militant unions and mass defense organizations there is no power on earth strong enough to stand against them.

Yellow dogs are usually applied where an industry is unorganized or partly organized, where a new union has not yet gotten fully on its feet, or where a union is weakened by poor or corrupt leadership, or by lack of militancy. Few employers dare to introduce yellow dogs in a completely organized industry. Where they do the union ignores the contract, or breaks the attack of the bosses by a militant strike, and survives. In

Ontario, Canada, the attempt to introduce yellow dogs into a hosiery mill was met by an immediate and complete strike. The result was that the yellow dog was smashed, and the union emerged stronger than before. This points the way.

Organize, build up *militant* unions! A union that will not fight is worse than no union at all. The bureaucratic leaders of the A. F. of L. unions will try to prevent workers from really fighting against the yellow dog. Workers who have watched these leaders lick the hands of government officials and the big employers as they rammed down the throats of the workers one wage cut after another, the speed-up, the police terror, the charity slop-line, know that these misleaders of labor work hand in hand with the employers in their starvation program against the working masses and the unemployed.

In the fight against the yellow dog, as in all workers' struggles, the misleaders of the old unions every day reveal more openly their rôle as agents of the employers. Their "opposition" to the yellow dog is limited to the peaceful, "legal" arenas of the courts and the legislative chambers.

Mass action is carefully avoided. All dependence is placed on "behind the scenes" wire-pulling and political intrigue. Especially since the crisis, the A. F. of L. leaders have been satisfied to adapt themselves to the yellow dog contract, carrying out all its provisions carefully and obediently. In the miners' strike of 1927-28 the officials of the United Mine Workers of America put up no resistance whatsoever to yellow dog contracts. Most treasonable of all, officials of this union have actually used agreements themselves similar in purpose to the yellow dog, to expel militant elements from their ranks and to get them dismissed from their jobs. For example, in the Scotts Run field of West Virginia the U. M. W. A. has a wage agreement with the coal company. The militant National Miners' Union is strongly entrenched in this field. The reactionary U. M. W. A. has put through a joint agreement with the coal operator fining every miner \$10 who so much as attends a dance of the National Miners' Union. If the miner refuses to pay the fine, he loses his job.

The militant industrial unions declare the tactics of the A. F.

of L. union bureaucracy against the yellow dog impotent and treasonable. The Trade Union Unity League policy, to which militant workers subscribe, breaks with this yellow A. F. of L. policy, and proclaims that the chief weapon of the worker, against the yellow dog, as against all oppressive measures of the capitalist class, is militant *mass struggle*, carried out by militant mass strikes and militant mass demonstrations. For the purpose of waging militant mass struggle, based on definite economic demands, the T. U. U. L. marshals all the ranks of the workers, men and women, white and Negro, employed and unemployed into a mass united front of strong industrial unions and affiliated organizations. Militant mass strikes will crush the yellow dog!

### *Organize for Defense and Political Action*

But unions, however militant and however strong, are not the whole story. Workers must learn to organize for mass protest and militant political action. They must build up such relief organizations as the Workers International Relief, and such defense organizations as the International Labor Defense, which fights the yellow dog, as it fights the labor spy, the frame-up system, police persecution, deportation, and all other weapons of the capitalist class. The defense organizations of the workers can make the strength of the working class felt—and feared—in the courts; they can amplify the demands of the workers so loudly that no walls of Congress or legislature will be thick enough to keep them out.

But the worker must not stop there, if he means to destroy once and for all the yellow dog and the whole foul machinery that the exploiters use to chain him down. In the Soviet Union there is a government of the workers, with industry organized on a socialist basis, and the workers in possession of all the means of production. There labor for the first time in the history of the world is free of its chains. This serves as an inspiration and guide to workers everywhere in their struggle against capitalist exploitation and oppression.

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