"WHY OUR ANTI-TRUST LAWS SHOULD APPLY TO LABOR AS WELL AS TO MANAGEMENT"

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Guest Speaker

THEODORE R. ISERMAN
NEW YORK CITY
Member of the Law Firm
Kelley, Drye, Newhall & Maginnes

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[Address]

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PRESIDING OFFICER

JOHN C. McCURRY

Secretary and General Manager
Michigan Manufacturers' Association

WHY OUR ANTI-TRUST LAWS SHOULD APPLY TO LABOR AS WELL AS MANAGEMENT

This topic that we're going to think about here today is a rather controversial one, controversial in the sense that people who do not regard the problem the same way I do usually are vigorous, if not violent and bitter, in disagreeing with the thesis that I hold to. This being such a controversial subject, I think I should say that I am speaking my own views on this and not speaking for or on behalf of anyone else. I do hold these views, that I am to tell you about, very strongly.

I come to Detroit quite frequently, and I usually ride the Detroiter. I think it is an excellent train, but sometimes things aren't exactly right on it. Last night there was a rattle in the room I had, and I spoke to the conductor, my good friend Mr. Matthews, about it and complained a bit, and he moved me. He was in very good spirit about it. He didn't say that I was trying to wreck the Detroiter or destroy the New York Central System. However, if I had made some complaint or criticism about the Brotherhood of Railway Conductors, he might have thought I was trying to wreck the union or am an enemy of the labor movement.

It is unfortunate that you can point out the imperfections, and there are some, of the union movement only at the risk of being called a labor baiter or being anti-labor. But, I am afraid I will have to run that risk today because I have a few criticisms of some aspects of the labor movement and of some unions.

Unionism Does Not Make Bad Things Good

When labor unions restrict output, fix prices, limit markets, stifle competition between employers—all things that our anti-trust laws forbid—I ask you, is there any logical or economic justification for saying these things that are bad

when businessmen do them, are not bad when unions do them, either acting alone, or in collusion with employers, or in collusion with each other.

The anti-trust laws deal with two kinds of things, generally speaking. One we loosely call restraint of trade. The other we loosely call monopoly. Unions engage in both.

Let's look at some of their restraints of trade.

As far back as 1869, John Stuart Mill commented on union regulations that forbid progress and make work inefficient. One that he mentioned called for carrying bricks in hods, instead of in wheelbarrows, which seems to have been a bad thing in those days. Our Department of Justice has reported many practices in the building trades of a kind with those that John Stuart Mill thought were bad, and new ones that would have shocked even more than those that he found in his day.

The "bogus work" rule in the printing trades, limitations on the "height of the lay" in the clothing business, featherbedding on the railroads, are all examples of what I am talking about.

During the New Deal, the Government successfully prosecuted many unions for boycotting labor-saving machines and tools, for featherbedding, for excluding from particular areas goods that came from other areas. But in 1941 the Supreme Court, in the *Hutcheson* case (312 U.S. 219) held that the Norris-LaGuardia Act virtually immunized unions against prosecution for restraining trade in any way.

Unions Sometimes Fix Prices

Unions sometimes fix prices and strike against employers who lower prices. In the men and boys' clothing business, behind a pleasant facade of harmonious industrial relations, the Amalgamated Clothing Workers dictates the prices manufacturers will pay their contractors and with what contractors they may do business, and it requires the manu-

facturers and the contractors to use uniform and often fictitious labor costs in pricing their products, and it audits the employers' books to be sure that they adhere to these regulations.

Resisting Progress, Unions Demand Its Benefits

Unions almost everywhere attack as a "speedup" every effort of employers to produce more goods with the same amount of work or with less work. Yet they demand for their members, to the exclusion of owners and the public, benefits that result from higher output. This resistance to change and these claims to the fruits of change in some industries discourage investing ingenuity and capital in new methods and new machines that raise output and lower costs. I question whether they encourage progress in any industry.

We have seen in the last four weeks how the New York Crime Commission has unfolded the sordid story of the International Longshoremen's Association. Well, some of these people may go to jail for perjury, some may go to jail on income tax charges, but notwithstanding that the I.L.A. through pressure on employers has engaged in every conceivable restraint of trade, as well as other crimes and misdemeanors, there is nothing we can do about the I.L.A. itself.

Things for which employers, if they did them alone, could be fined and sent to jail under the anti-trust laws, are no better simply because they result from collective bargaining or from union pressure. The effect upon the public is the same whether restraints of trade result from conspiracies of employers, conspiracies of unions and employers, or acts of unions alone.

Nearly everyone, even some union leaders, deplore such things as these. That seems to be one of Mr. John L. Lewis' saving graces. Congress has tried in the Taft-Hartley Act to

deal with a very limited few that involve some forms of featherbedding and some forms of secondary boycotts. But with the National Labor Relations Board administering the law, even these limited efforts have largely failed. We should return these evils, all of them, to the anti-trust laws, from which the Supreme Court, not Congress, removed them, and from which the Supreme Court immunized the unions.

The other problem with which the anti-trust laws deal, except in the field of labor, is monopoly.

Unions Have Effective Monopolies

Spokesmen for organized labor tell us that no union has a monopoly of labor in any industry.

In a highly technical, academic sense, this probably is true. An insignificant number of coal miners are not members of the United Mine Workers. A handful of automobile people are in the UAW-A. F. of L., instead of the UAW-C.I.O. In this limited economic sense, we probably have no perfect monopoly in business or labor.

Labor monopoly, in the sense in which I use the term, is the control by one union, or a combination of unions, of collective bargaining in the plants of competing employers.

Labor monopoly, this centralized control of collective bargaining, the nation-wide or region-wide strikes that often go hand-in-hand with it; its effect on output, prices and the consuming public, and its eventual effect on free collective bargaining and free competitive enterprise, on our Government and on our political institutions themselves, confront us, I think, with our greatest and most pressing domestic problem.

We are inclined to regard widespread strikes in a vital industry as the principal disadvantage of labor monopoly. Congress has tried to deal with such strikes in Title II of the Taft-Hartley Act. This provides for enjoining them, when they imperil our national health or safety, for a period of 80 days.

These so-called "emergency" strikes are indeed disastrous. We have seen how disastrous they can be time after time, in coal, steel, the railroads, trucking, the maritime industry and in others. But they are the spectacular results of labor monopoly.

Bad as they are, are they necessarily the worst feature of labor monopoly? May they not be sometimes a blessing? When one occurs, the chances are it's because someone is objecting to lower output or higher labor costs that the public has to pay for in higher prices.

Other Evils Worse Than Strikes

It is when strikes do not occur, it is when all the employers in an industry, however unwillingly, accede to exorbitant demands of a union and pass the cost on to the public, that labor monopoly holds year in and year out its greatest threat to our economy and deprives the public of the protection that true competing provides.

Our people always have been sensitive to great concentrations of power. We have many laws against monopoly in business. Yet, we have nurtured monopolies in labor until the monopolies now have become greater and more powerful than any other that we have ever known. They repeatedly have defied the Government itself, and have forced it to meet their terms, as both the late Philip Murray and John L. Lewis did within the past year.

We look upon the Mine Workers and Steel Workers as epitomizing labor monopoly. But Dave Beck and his Teamsters could bring greater paralysis to the country in hours than these two unions together could do in weeks. And there are other unions that exercise tremendous power over our whole economy. Our problem now is to reduce the power of labor monopolies to reasonable proportions, and to regulate at least their most obvious abuses.

Up to a hundred years ago, combinations of two or more

employees to act in concert, as by striking, to further their own interests were considered to be against public policy and therefore unlawful, just as were combinations of employers to raise prices or otherwise to restrain trade.

But with the passing of time, the courts recognized the right of employees of any one employer to form a union that could monopolize labor in that employer's plants.

Laws Have Created and Extended Labor Monopolies

Up to 1935, our laws merely granted immunity to such monopolies. Since then, the laws have created them, have extended them and have provided machinery for maintaining them and enforcing their powers.

Under the Wagner Act, and under the Taft-Hartley Act, a union that represents the majority of the employees in a bargaining unit, ordinarily a plant or all the plants of a company, becomes the sole and exclusive bargaining agent of all the employees in the unit.

The Act compels the employer to deal with that union. It forbids him to deal with the employee himself, or with any other union. This is compulsory monopoly, enforced by law.

When such a monopoly is limited to employees of a single employer, it is one with which few people quarrel, and does not concern us here.

But the same union, or its locals, which it controls and whose policies it dictates, can, and ordinarily does, acquire by law a monopoly of labor in an entire industry.

Dangers Have Increased Since 1935

What are the effects? Well, they are different now from what they were in 1935. Then, unions affiliated with federations like the A. F. of L., or the railroad brotherhoods, had about 3 million members. Today they claim 16 million.

Nearly all of our great industries—steel, coal, automobiles,

rubber, men's and women's clothing, chemicals, canning and packing food, metal mining, shipping, trucking, railroads—are all almost completely organized. And in most instances, a single union and its locals represent through the monopoly by law that the Wagner Act provides, all or nearly all of the employees in the industry.

Aside from the Wagner Act and rulings of the National Labor Relations Board under it, unions have their own devices for making their monopolies effective. Coercion, abuse and ostracism, the "silent treatment," as we call it, are not the least of these. Agreements with employers that compel union membership increase their powers. More recently, negotiated pension arrangements give unions still more power over employees and strengthen the unions' monopolies.

Since 1935, unions with the backing of the Labor Board have extended the scope of bargaining far beyond wages, hours and working conditions as we understood the terms seventeen years ago.

In 1935, bargaining except in a few industries was on a plant-by-plant or company-by-company basis, with the unions' central offices exercising little if any control over individual settlements. But now, and particularly since the days of the War Labor Board, control of bargaining in most unions has become highly centralized.

All these things make a problem that in 1935 seemed not too important, one that has today become of first importance.

Many astute bargainers believe that bargaining should be plant by plant. A large automobile parts maker backed that view through a severe strike last year.

No Quarrel with Company-Wide Bargaining

But I am not arguing here either for or against company-wide bargaining or plant-by-plant bargaining, as a matter of labor relations policy. I am trying to define the limits

within which our anti-trust laws should permit unions to exercise the monopoly powers that the law gives them.

A union's power, it seems to me, if it is limited to employees of a single employer, has no greater effect on our general economy than has the power of that employer to control his business. Consequently, I find it difficult to argue that our anti-trust laws should forbid employees in all plants of General Motors, for example, or United States Steel, or even the Bell System, if they wish, to choose a single union as their bargaining agent. I think the law should permit that.

But when unions extend their control to employees of two or more competing enterprises—to General Motors, Chrysler, Ford and all the rest in the automobile business; to United States Steel, Bethlehem, Inland and the other steel makers—they create combinations of employees that can have upon our economy effects as adverse as any combinations of employers that our anti-trust laws forbid.

In our economy we depend upon competing in business for two things: (1) to protect the public against unreasonable prices, and (2) to encourage businessmen to develop new and improved methods and techniques that provide more and more goods that our people need and enjoy.

Every union that has a monopoly in an industry aims to impose upon every employer in the industry substantially identical terms and conditions of employment, to standardize output, to equalize labor costs, and to translate into higher wages, not lower prices, increased productivity through technical advances.

Unions' Aims Conflict with Public Interest

These aims obviously conflict with our policy to encourage employers to compete with each other and to increase output, thereby protecting the public and serving more and more people.

We might not worry much if a labor monopoly existed at

but one stage or at a few stages of the process by which raw materials become a finished product and get to the consumer. After all, a wage increase in auto plants that adds $20 to the cost of a two-thousand dollar automobile might keep a few thousand people from buying cars in that price class, but would not burden the whole economy.

But labor monopolies exist at virtually every stage of the process of making everything we use, producing raw materials, transporting them, transporting goods in process and finished products; making machines for producing raw materials and processing them, and doing the processing itself.

According to the economists, pay for personal services accounts for more than 80 per cent of the cost of manufactured goods. Taxes, depreciation, obsolescence, interest and other fixed charges make up much of the rest. It therefore is obvious that uniform wages, uniform limitations on output and uniform restrictions on technical progress at every step of the productive process leave a relatively small area within which employers can compete.

Public Pays the Bill in Higher Prices

When a great and powerful union controls collective bargaining in an entire industry, wages and other terms of employment not only tend to become rigidly uniform; they tend to become artificially and uniformly high. The public pays the bill in higher prices.

Let us see why this is true.

When a single union controls the wages, hours and working conditions in a whole industry, each employer in the industry can be fairly certain that the union will impose upon his competitors substantially the same disadvantages that it imposes upon him. It thus is unlikely that he will suffer a competitive disadvantage if he yields to excessive demands. This being so, his resistance to such demands tends to be weaker than if he lacked that assurance.

Sometimes employers feel themselves driven to form asso-

ciations through which they bargain with unions that represent the employees of all of them. When competing employers negotiate a single contract with the union, they can be still more sure that they will not suffer any competitive disadvantage by virtue of acceding to high demands. They have still less reason to resist those demands. And there is still less protection for the public against the higher prices that result from complying with uneconomic demands.

Industry-Wide Bargaining Stifles Competition

The lessened incentive on the part of employers to protect the public against high costs and low output when they combine together to deal with a union, makes monopolies of employment, if we can call them that, as bad for the public as monopolies of labor.

There is no limit to the concessions that employers, when they bargain together, can afford to make, except one: they cannot limit their output or increase their costs so much that the public will stop buying their goods and services and turn to substitutes or go without.

The fear that the public will turn to substitutes is coming to exercise less and less of a restraining influence, however. This is for the simple reason that most important industries are becoming so strongly organized that a labor monopoly in one that at the moment has an advantage is likely to increase costs in it so rapidly as to eliminate that advantage in due course. Competition with oil and other fuels may impel coal operators to resist the Mine Workers' demands at a particular time, but as labor unions in the competing industries, oil and gas, extend and develop their monopolies as John L. Lewis developed his, coal may regain some of its lost advantage. The railroads are losing business to airplanes, trucks, private automobiles and buses. But labor monopolies in the aircraft, automobile, trucking and bus industries may in time reverse that trend.

Industry-wide unionism has other adverse effects. It tends

to freeze out new businesses, to destroy less efficient firms and small firms, to make it hard for new firms to get into business, to deny employment to workers whose services are unequal to the union's high wages, to discourage industrializing undeveloped areas.

Unions Force Government to Intervene

There is another aspect of the matter. Collective bargaining is a painful process. This is true of employers' bargainers. When they deal with a centrally-controlled union, they find it far easier to follow a pattern than to set standards of their own. It is especially true of a union's bargainers, due to internal union politics. There is always a political rival in their union who can say that they should have made a better settlement, no matter how good it is. Hence, union officials ordinarily are happy when a government agency or some other decider relieves them of the responsibility of determining on what terms to settle. That is particularly so when the decider generally tends to favor the unions.

In recent years union leaders in large industries have learned that by precipitating these widespread strikes they can force the Government to relieve them of their responsibilities as collective bargainers. So, instead of putting pressure on employers by striking them one or a few at a time, the unions impose pressure on the public by striking all the employers at once. They force the Government to intervene, force it to set the terms of settling, and to set the terms high. This the steel union did, you remember, in 1946, and in 1949, and again last year, when a government board recommended for the steel workers, during a period of supposed stabilization, the biggest wage increase in history, and fringe benefits besides.

Unions Use Political Influence in Many Fields

The labor monopolists not only have power to force politicians to intervene in disputes between employers and

unions. Their power over millions of workers gives rise to claims on their part to great political power. Although there are grounds on which politicians, if they sought favor with working people instead of their leaders, could challenge these claims, many political people accept the claims at face value. And they act accordingly, as we have so often seen. Thus, the labor monopolists exercise influence in foreign relations, mutual security, defense and other government fields far removed from collective bargaining.

How to Deal With the Problems

How are we going to deal with these problems? Shall we have more and more government boards and panels, with the Government in the end dictating wages, prices and profits? If we do this, "free collective bargaining" will be less free, the bargaining will exist only in the name, and the collective part of it will be more collective still. "Free competitive enterprise" will be less free, less competitive, and I am afraid, far less enterprising than it is now. If we follow this course of more and more government intervention, we can foresee something that we may call by some such name as "industrial democracy," but I think it will be something more closely allied to fascism.

Now we can, on the other hand, adopt measures that preserve collective bargaining and competitive enterprise, but that require them to serve their proper function, to further our way of life, not to undermine it.

If Congress forbade great labor unions to control collective bargaining throughout entire industries or large segments of them, there is every reason to believe that contracts would end at varying times, and widespread, simultaneous strikes and the fascistic intervening by Government that such strikes bring about would, in time, disappear. The need for expedients, such as seizure and things of that sort, with which we have tried to cope with these strikes, also would disappear.

And if Congress did this, it would abolish other evils of what I call labor monopoly. It would protect consumers against unduly high costs, restricted output and spiraling wage inflation. It would restore collective bargaining to the company level, where each employer and the representatives of his employees could bargain and reach agreement in the light of *their* needs, *their* circumstances at the time, *their* wishes, and not according to the dictates of great labor people in central offices of the union, far removed from the plants. It would protect new and small firms and marginal workers, and would facilitate the normal development of non-industrial areas.

Congress could do this by providing that employees of each employer should have their own representative. This could be an independent union or a sub-division of one of the great international unions, such as the General Motors Division of the UAW-C.I.O., but this sub-division would be autonomous in its dealings with the employer. Congress should forbid the representatives of employees of different employers to combine or conspire together, or to subject themselves to common control in their bargaining activities, or to strike at the same time by agreement with each other.

If, in general, bargaining agents could be no bigger than the companies with which they deal, some of our critics of bigness, as such, probably would become less vocal.

Should Forbid "Monopolies of Employment"

Now, Congress at the same time should forbid competing employers to combine or conspire together in fixing terms or conditions of employment to the same extent that it forbids their employees to combine or conspire together or to subject themselves to common control.

I see no objection to excepting from the provisions of any such law as I'm talking about small employers and representatives of their employees in local areas, so long as such

combinations of employers and their employees could not precipitate strikes affecting important areas of our health and safety, and so long as those combinations must compete with other such combinations.

I believe that the best way to deal with this problem is by amending the anti-trust laws. We have tried other things. They have not worked well. High costs, low output and high prices hit the public equally hard, whether they result from monopolistic combinations of competing employers or monopolistic combinations of representatives of their employees.

Were we to have such a law as this, we would hear a lot of unhappy cries from the self-proclaimed "friends" of labor. But we should legislate not to please monopolists, but to protect the public.

Critics' Claims Not Valid

What we would hear about this law, I think, is no more valid than were the cries of "slave labor," "sweat-shop" and "union-busting" when Congress passed the Taft-Hartley Act in 1947, under which unions have thrived and have continued to increase their already tremendous powers.

Critics will claim that the law would break up national and international unions, such as the United Mine Workers, the Machinists and the UAW-C.I.O. It need not do this. Under a properly drawn law, such unions as these—the great international unions — could continue performing most of their present functions. And incidentally these functions were the only ones that most of them performed before World War II when the National War Labor Board so greatly accelerated the trend toward industry-wide bargaining. But these big unions should not control the bargaining activities of constituent units that represent employees, nor dictate the terms of settlements, nor call widespread strikes, as they have done more and more in recent years.

Critics also will say that any such law as this would bring

about "competition in wages." They leave you to assume that competition in wages is necessarily bad for working people. Is this so? Wages are rarely the most important element of what we call labor costs. Limits on effort and output, resistance to new and improved methods and techniques often are more important than higher wages. Removing these limitations and restrictions would enable many employers to raise wages and reduce prices. Furthermore, anyone who has studied the history of wages and wage movements and who thinks in factual terms, not emotional terms, knows that "competition in wages" tends to raise wages or to keep them high, not to depress them. In the preamble of the Wagner Act it says that wage-cutting brings on economic depressions. Well, anybody who has studied economics at all or has observed life around him over a period of time knows that depressions come and wage cuts follow. It is not the other way around and never has been.

Association No Stronger Than Weakest Member

Some, but by no means all, employers who now bargain through associations, and particularly those representatives of the associations who have vested interests in their jobs, will object to such a law as I favor. They will argue that if the law forbids these employers to bargain jointly, unions will select the weakest employer, strike him and establish a pattern, then pick off the others one by one. This overlooks the fact that the law would forbid conspiracies between the bargaining agents, and collusive selecting of firms to strike. Employers and unions would be far more evenly matched if the representatives consisted only of the employees of the particular employer. They would be much more evenly matched in most cases than they are today, when even the biggest firms face far bigger unions. Finally, this argument overlooks the fact that a chain is no stronger than its weakest

link, and an association of employers is no stronger than its weakest member. We have seen time and again how unions, when an employers' association is adamant, begins settling individually with those who, although not necessarily the weakest, are for one reason or another least inclined to stand a strike at the particular time or on the particular issue. That is what happened in the steel strike in 1949. Bethlehem Steel had a pension plan. Although not the weakest firm in the industry by any means, it soon tired of a strike over a pension plan that did not impose much greater burdens on it than it already had assumed under its arrangements.

It is the unions that press most vigorously for industry-wide bargaining. Employers who think the unions do this for the employers' benefit are to my mind very naive.

Law Enforcible and Politically Expedient

Another claim is that we could not enforce a law like this. As a lawyer, I think we could. Collective bargaining is, in the legal sense, open and notorious. Many people know what goes on. Proving violations in these circumstances should not be too difficult. Until the Supreme Court decided the *Hutcheson* case and gave the unions immunity to all intents and purposes, the Anti-Trust Division of the Department of Justice was highly successful in prosecuting unions and employers who, in the guise of collective bargaining, violated those laws by entering into arrangements for price-fixing, dividing markets, boycotting goods, and that sort of thing.

A doubt exists as to the political expediency of attempting to bring labor monopolies under the anti-trust laws. In passing the Hartley Bill in 1947, the House of Representatives by overwhelming majorities approved clauses much like those that I have discussed here. Similar clauses failed in the Senate by a single vote.

Since then, the public has had further demonstrations of the monopoly power of unions. The public and members of Congress are becoming increasingly aware of this tremendous and dangerous power. They are becoming increasingly aware of the inflationary effect of spiraling labor costs. Even members of unions are beginning to see that their so-called "gains" are often illusory, largely lost in the higher prices they have to pay to meet the wage raises that other workers receive.

Politicians who wish to curry favor with labor leaders probably will shun such a law as I have discussed. But I am convinced that if they meet the issue squarely, as many did in defending the Taft-Hartley Act, they can persuade many working people themselves and the vast majority of all other people that subjecting unions to the anti-trust laws is necessary if our collective bargaining system, our free enterprise system, and the way we live, are to survive.