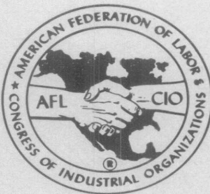


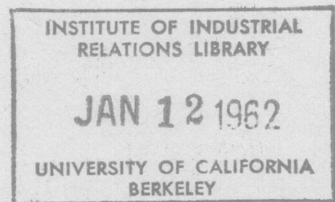
Labor monopoly
(1955)

An
Analysis
Of
Antitrust Laws
And Union Activity

Statement of —



American Federation of Labor and
Congress of Industrial Organizations



Washington, 1955?

**Statement of Andrew J. Biemiller, Member
National Legislative Committee
American Federation of Labor*
Before the Antitrust Subcommittee
of the House Judiciary Committee
Concerning Application of the Antitrust Laws to Labor Unions,
June 8, 1955**

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THIS subcommittee has been holding hearings on the report of the Attorney General's National Committee to Study the Antitrust Laws. This report deals with the application, enforcement, and administration of a number of congressional enactments starting back with the Sherman Act of 1890. This is a very important current issue which deserves serious attention from the Congress.

This committee's report deals briefly with the extent to which the antitrust laws have been applied to union organizations and to union activities. For the most part, this section of the committee's report confines itself to an analysis of the present situation in this field, with a guide to the ways in which it believes existing antitrust laws can be applied in special cases to union activity.

The committee does make some general comments regarding union activities, and it broadly suggests "appropriate legislation," but in no way does it state that antitrust laws should be extended to govern union activities and it does not examine or state whether in fact there appears to be an actual need for congressional action.

Nevertheless, the committee report seems to have served as a signal for a number of anti-union employers and employer associations, such as the U.S. Chamber of Commerce and the National Association of Manufacturers, to raise once again the battle cry "put unions under the antitrust laws."

The argument is a familiar one. It states that antitrust laws now apply only to business while unrestrained union activity is permitted. Unions have grown so big, the argument runs, that they constitute a danger and a threat to the success of our free enterprise system.

This is the type of argument which has now been made for well over half a century. Although it has a very plausible ring, it is as phony as a \$3 bill.

This argument relies on a number of basic misconceptions. I would like to take the time to explain to this committee the fundamental facts that make it clear that it would neither be necessary nor desirable for Congress to take particular action to bring unions under the antitrust laws.

1. The call for application of antitrust laws to labor unions ignores the bitter pages in American history reflecting use of antitrust legislation to suppress legitimate union activities.

In 1890, at the time of the passage of the Sherman Anti-Trust Act, the American Federation of Labor was nine years old. American trade unions were just beginning to assume a form adequate to represent the laboring people of America.

Congressional debate over this legislation reflected clearly the intent to limit the abuses of big business combinations. There was no

reference to unions in the Act. House debates did not refer to unions at all. All legislators who supported labor voted for the Act.

Yet, in 1893, the second attempt to apply the law involved a group of workers.¹ During the same year the Circuit Court for the Eastern District of Louisiana² held that a strike of draymen in New Orleans was an illegal restraint of interstate commerce under the Act. The Court, in enjoining the strike, concluded that in legislating against restraint of trade, Congress acted so broadly that whatever the source of the restraint, the fact of it was sufficient to allow an injunction under the Sherman Act.

The Courts until 1914 continued to avail themselves of the injunctive power under the Sherman Act in many types of labor disputes. For example, the lower courts, in the famous Debs case,³ enjoined a railroad strike on the ground that the interstate commerce via the rails was being impaired.

In the notorious Danbury Hatters' case,⁴ the Supreme Court decided that a nationwide boycott of non-union made hats initiated by the Hatters' Union violated the Sherman Act. In arriving at its opinion, the Court concluded that the Act made no distinction among various types of contracts and that any contract which might result in restraint of trade was illegal.

It is hard to realize today the force with which the Danbury Hatters' case burst upon the slowly developing union movement. Here was a small union conducting a peaceful action, merely urging its members and sympathizers not to purchase the products of an anti-union hat concern. As a result of its prosecution and conviction, the entire funds of the union were confiscated. Since even these were insufficient to pay the fine, the homes and life savings of the individual members were seized to the extent necessary to pay the fine.

In the face of this threat to their very existence, is it any wonder that all organized labor actively campaigned to show the Congress and the public the wide gulf between action necessary to curb business evils and the action that had actually been taken to stifle union organization?

When the Clayton Antitrust Act was considered in 1914, unions succeeded in persuading Congress to enact the famous Section 6 which states specifically that "The labor of a human being is not a commodity or an article of commerce." This action was supplemented by the language in Section 20 which was designed to remove

¹ *Blindell v. Hagan*, 54 F. 40 (1893).

² *United States v. Workingmen's Amalgamated Council of New Orleans*, 54 F. 994.

³ *United States v. Debs*, 64 Fed. 724 (1894).

⁴ *Loewe v. Lawlor*, 208 U.S. 274 (1908).

the power of the federal courts to issue injunctions in cases involving labor disputes.

With the cooperation of the Courts, however, anti-union employers were able to find a way around these safeguards for which organized labor had so desperately fought. They succeeded, through judicial interpretation, in getting the protection under the Clayton Act so diluted that it merely meant that workers had the legal right to organize into trade unions. It did not mean, the Courts ruled, that various types of union activity were protected against the injunction process. The antitrust laws continued to be used to break strikes and harass union workers.

Two particular cases show how the antitrust laws were applied against unions during the 1920's. In the first,⁵ members of the Machinists Union in New York City refused to work upon or install printing equipment produced by a non-union manufacturer in the state of Michigan. The Supreme Court's position was that the dispute did not come under the specific wording set forth in Section 20 of the Clayton Act. The Court emphasized that the dispute was not between an employer and his employees, but between the employees of one employer and another employer. Relying on this distinction, the Court allowed an injunction against the union in spite of the provisions of the Clayton Act.

This same attitude towards secondary activity was reflected by the Supreme Court in an important 1927 decision.⁶ Again, the Court held that concerted refusal by organized labor to work upon or with the stone products manufactured by a non-union manufacturer resulted in illegal restraint of commerce under the Sherman Act.

These continuing abuses of the injunction power were finally curbed with the adoption of the Norris-La Guardia Act in 1932. This statute was designed to protect union activity from government by injunction. The law's ban on injunctions was applied to "any controversy concerning terms or conditions of employment . . . regardless of whether or not the disputants stand in the proximate relation of employer and employee."

More recently, in 1940-41, the Department of Justice embarked upon a series of efforts to apply the antitrust laws against unions. This led to a series of Supreme Court opinions which have clarified the present attitude of the Courts on this issue. Perhaps the most important principle adopted by the Court has been that when a union acts alone in behalf of the interests of its members, its activities do

⁵Duplex Printing Press Co. v. Deering, 254 U.S. 443 (1921).

⁶Bedford Cut Stone Co. v. Journeymen Stone Cutters' Assoc., 294 U.S. 37 (1927).

not fall under the antitrust laws which are designed for a fundamentally different purpose, the maintenance of competition among business enterprises.

For example, in a significant 1941 decision,⁷ the Court considered the problem of whether a strike by a union against an employer who had given work to a competing union's members violated antitrust statutes. In its decision, the Court ruled that passage of the Norris-La Guardia Act effectively nullified previous judicial interpretations of Section 20 of the Clayton Act. The Court concluded that the Sherman Act could not apply to the types of union activity specified in Section 20 of the Clayton Act and Section 4 of the Norris-La Guardia Act. This conclusion, however, was limited to those situations where a union carries on its efforts in its own self-interest and does not unite or act in concert with employers.

A few years after this decision, the Supreme Court was faced with a different type of situation. In this case⁸ the Court found that certain union activity had been conducted in collusion with employers and that as a result, the union's conduct did fall within the scope of the antitrust laws. This decision has made it clear that to remain free of the antitrust laws, a labor union must refrain from combining with employers to restrict or control business practices.

Many of the protections finally achieved for union activity were negated by the passage of the Taft-Hartley Act. Once again various types of union activity are subject to government action. Once again injunctions are authorized against unions. And now over and beyond the penalties that have been inflicted on organized labor as a result of the Taft-Hartley law, anti-union employers are seeking to open additional areas for court action against unions. If they should succeed, the resulting application of antitrust laws to unions would offer untold opportunities for stifling traditional peaceful union activities.

2. Labor unions are fundamentally different from business organizations and cannot be treated in the same way for purposes of antitrust legislation.

We must not lose sight of the fact that business enterprises and labor unions are distinctly different types of organizations. They differ in makeup, in functions, in objectives. We think it appropriate to note specifically a few of these most fundamental distinctions.

A business enterprise basically represents an investment of capital. A labor union, on the other hand, is an organization of human beings.

A business enterprise handles products. It buys and sells goods.

⁷United States v. Hutcheson, 312 U.S. 219 (1941).

⁸Allen Bradley Company v. Local No. 3, 325 U.S. 727 (1945).

But the central concern of a union is human beings—the labor its members have to offer—the terms under which it shall be provided—and the welfare of its members.

A business enterprise's prime objective is profit. Its success is measured primarily by the return it can earn on its investment. In contrast, a labor union's objective is protection and aid for workers. Its success is measured primarily by the extent to which it can maintain and improve workers' living standards.

These are vital differences. They go to the heart of the basic distinction our society draws between the impersonal dealings of business and the personal, human nature of labor organizations.

This distinction was described by Samuel Gompers in 1914 in these clearcut terms: "The principle ('that the labor of a human being is not a commodity or article of commerce') is the basis of industrial liberty . . . (It) distinguishes between the labor power of a human being who produces an article and the thing which he produces.

"In brief, the thing upon which that principle is justified is as follows: Men and women are not of the same nature as the things they make. Labor power is not a product—it is ability to produce. The products of labor may be bought and sold without affecting the freedom of the one who produces or who owns them—but the labor power of an individual cannot be separated from his living body. Regulation of and conditions affecting relations under which labor power is used are a part of the lives and the bodies of men and women.

"Laws which apply the same regulation to workers, and to the products made by workers, are based upon the principle that there is no difference between men and things. That theory denies workers the consideration and the rights given to human beings. It denies the freedom and protection of free men and women."

We should not permit this distinction to be obscured or forgotten. Let us not be led astray by the propaganda campaign being undertaken by anti-union employers who urge application of business anti-trust laws to union activities.

There is a further reason why the antitrust legislation should not now be stretched to cover unions. I refer to the fact that through the years a great body of court and administrative interpretations and precedents has been developed under this legislation. Since the legislation has been applied to commercial relationships of business enterprises and has dealt with the activities of business in determining purchase and sales prices for commodities, these rules have been specially shaped to meet certain evils arising out of business practices.

It would be a serious mistake to assume that this body of pre-

edent can simply be transferred and applied to the different area of union activities and employment relationships.

3. While union organization has increased during the past 20 years, the labor movement cannot be considered "monopolistic," nor does its strength create any threat to America's free enterprise system.

The effort to extend antitrust laws to unions is spearheaded by continued references by industry to so-called "monopolistic power of unions" and to "giant unions." This is simply part of a semantic campaign designed to delude some of the public into believing that it might make sense to apply the antitrust laws to "union trusts."

It is true that union membership has increased during the past two decades and that the financial position of unions generally has improved. But an examination of union strength and growth must be kept in proper perspective.

The total financial resources of all unions combined has been liberally estimated as perhaps as high as \$1 billion.⁹ But this figure, standing alone, is highly misleading. These financial resources are not under the direction or control of any one organization.

Organized labor in this country is not centrally controlled. Even when the merger of the American Federation of Labor and the Congress of Industrial Organizations will be completed, the new federation will be made up of more than 145 separate national and international unions which determine their own policies. They in turn are made up of more than 60,000 local unions which are largely autonomous.

The various unions never act as a single unit. Each controls its own finances.

The American Federation of Labor, for example, no more controls the treasuries of its affiliated organizations than the United States Chamber of Commerce controls the combined assets of its member corporations.

The Federation itself, incidentally, had a financial balance of but \$1½ million at the end of its last fiscal year's operation. Its total receipts for a year to cover all of its expenses came to but \$5½ million. This is less than, for example, the government's expenditures for the management of its fish and wildlife service and it amounts to less than a fifth of the budget for the Weather Bureau.

⁹This is the rough estimate made by Professor Nathan Belfer in his examination of union finances in "Trade Union Investment Policy," Industrial and Labor Relations Review, Cornell University, April 1953.

Consider union financial strength from another standpoint. If the combined finances of all unions were to be divided over the more than 16 million union members, they would amount to perhaps as much as \$60 per member, that is, probably less than one week's wages per member.

But even more significant, the financial resources of organized labor in no way begin to match those of business. The combined market value of corporate stock at the end of 1954 has been stated by the Securities and Exchange Commission as amounting to about \$268 billion. Total combined union resources amount to far less than $\frac{1}{2}$ of 1 percent of that sum.

Moreover, even if the resources of all unions were to be combined, they do not begin to equal those of many individual large corporations. Last year alone, for example, the total earnings before taxes of one corporation, General Motors, amounted to almost \$2 billion, or about twice as much as the accumulated finances of all local and national unions affiliated with the AFL and CIO. General Motors' total assets at the year end were greater than \$5 billion.

Another corporation, American Telephone and Telegraph, had more than \$16½ billion in total assets at the end of 1954. In cash and government securities alone, this one corporation had almost \$1 billion, an amount about equal to the combined resources of all American unions.

Of course, if financial resources are to be compared properly, the comparison should be between the individual company and the individual local union which represents its workers. It is evident from such comparisons that the strength of unions lies, not in relatively meager treasuries, but rather in their membership.

While a union needs certain income to function, its ability to improve worker living standards is rooted essentially in its members' willingness to act together and, if necessary, to withhold their labor. If legislation is enacted to eliminate or restrict the right of workers concertedly to withhold their labor and peacefully to persuade the public to withdraw its patronage from a particular employer, the union's strength is effectively dissipated even if it has a substantial treasury.

It is also important to remember, in terms of the economy as a whole, that despite an increase in union membership in recent years, the approximately 16 million union members are but some 25 percent of all workers in the country. If we do not count the self-employed, the executives, the farmers, and others normally not included in unions, the percentage is still less than 40 percent.

Actually, it is in the absence of a union that there is a monopoly

in the employment relationship. Without a union, the workers can hardly increase wages or improve conditions through individual efforts. The employer alone decides. He truly has monopoly power over unorganized workers. It is only with the establishment of a union that workers can take some effective part in determining their conditions of work.

There is another criterion which should be taken into account in considering whether unions have so-called "monopoly power." Unions have made great strides indeed in advancing the living standards of their members and of workers in general. We are proud of these accomplishments. But let us not lose sight of the fact that hourly wages of the average factory worker today have as yet been increased to but \$1.85 an hour, an amount which over a full year's employment will provide income of only \$3,700, an amount still not enough to provide a satisfactory living standard for a family.¹⁰ The picture is broadly the same for wages of non-factory workers. Can it truly be said that organizations of such workers have exercised "powerful monopolistic control" to the detriment of society?

Free enterprise in America is in no way endangered by the activities of organized labor. Rather, organized labor consistently has been and is a staunch supporter of free enterprise. In fact, to the extent that organized labor has been successful in its objective of protecting workmen and bolstering American living standards, it has played a significant constructive role in strengthening this system and providing it with a sound base for continued healthy operation.

Gains in union membership and advances in living standards, it should also be emphasized, have not been achieved at the expense of business, but have rather contributed to and gone hand in hand with its increasing welfare as well. It would be ironic indeed if an anti-union segment of industry were to succeed in muzzling union effectiveness by extending antitrust laws to unions under the guise of defending the free enterprise system.

4. The abuses of which anti-union employers complain, either are already the subject of Congressional regulation or are not actually significant abuses.

Those who argue that unions should be brought under the anti-trust laws find it easy to utilize such time-worn phrases as "labor monopoly," "racketeering," and "featherbedding." These individ-

¹⁰U. S. Department of Labor "City Workers' Family Budget" estimates that as of October 1951 a four-person family needed an annual income ranging from \$3,812 in New Orleans to \$4,454 in Washington for a "modest but adequate" standard of living.

uals find it far more difficult to state exactly what union activities constitute such a threat to the free enterprise system that they need to be the subject of specific action by Congress.

We have examined most diligently the recent arguments of those who favor placing unions under the antitrust laws. Frankly, we have found very few specific complaints regarding union conduct and nothing that is at all new.

Among the alleged types of union activity which anti-labor spokesmen have mentioned as "monopolistic" in character are the following:

1. Various types of "secondary boycotts."
2. Pressure for the hiring of "unnecessary" labor.
3. Jurisdictional disputes.
4. Price fixing and control of the market.
5. Opposition to technological improvement.
6. Industry-wide bargaining.

What is the status of these issues today? First of all, it should be noted that Congress has seen fit over the opposition of organized labor to write into the Taft-Hartley law a number of provisions dealing with some of these points. The statute, for example, includes specific provisions against activities noted by points 1, 2 and 3.

Not only does the law include these provisions which declare certain union activities to be unfair labor practices subject to government prosecution through the National Labor Relations Board, but in another section of the law the Congress provided that an injured party could sue for damages from any injuries received as a result of these activities.

Under each of these provisions, in the Taft-Hartley Law, action has been taken against unions and union officials. Yet, we find the U.S. Chamber of Commerce appearing before this Committee complaining that the NLRB has not interpreted this law correctly and that Congress should therefore pass a different type of statute. If this were done, it would open the way for certain types of union activity to be punished in three different ways: prosecutions by the NLRB, civil suit for damages, and prosecution by the Department of Justice.

Let me merely point out that organized labor, too, is very dissatisfied with these provisions of the Taft-Hartley law and with the manner in which the NLRB has interpreted them. We, too, believe that Congress should act regarding this problem. We believe that as the law is now written and interpreted it unfairly penalizes certain union activities. However, we believe that the proper forum in which to argue this is the debate over the merits of the Taft-Hartley law. Merely because the Taft-Hartley law has not operated to the satisfac-

tion of the Chamber of Commerce is no reason why Congress should pass a completely new law assigning authority to act in these matters to another government agency whose jurisdiction would overlap and conflict with the functions of the NLRB.

Point four in the campaign against unions concerns so-called "price-fixing and control of the market" through joint action with employers. Organized labor does not advocate collusion of this sort between unions and employers. Instances of such activity are extremely rare. On this issue the Supreme Court has made it quite clear that a union which joins with an employer in collusive action completely loses its immunity to antitrust action. Thus, no further legislation of any sort is needed to bring this type of activity by any union under the antitrust laws.

The fifth point involves alleged union opposition to technological improvement. It would be difficult today to find a dispute which has arisen as a result of union opposition to technological change as such. The disputes which have arisen over technological improvement rather reflect the union concern over the lack of adequate consideration for workers who may be directly and adversely affected by technological innovations.

The AFL's attitude is best expressed by a paragraph in a recent article by President Meany for *Fortune* magazine:

"Certainly the trade-union movement does not oppose technological change. There can be no turning back to a negative or shortsighted policy of limiting progress. . . . The answer to technological change lies in smoothing its transition and cushioning the shocks that attend it. This means, in the immediate sense, the establishment of severance pay, retraining of skills, reorganization of work schedules. These are social costs that industry will have to bear in order to avoid the wasting of human resources—and to avoid our calling on government to bear these costs if industry fails to do so."

It would be an exceedingly dangerous precedent to give employers by law an absolute right to introduce technological changes regardless of the effect on their workers, with the workers forbidden to take action to protect their own job rights and livelihood. We believe that careful consideration of the implications of such legislation will convince the Congress against any action to make illegal union efforts to gain severance pay, transfer rights, gradual change, or other measures to ease any adverse social impact on workers of technological innovations.

The sixth item in the list of alleged union abuses, industry-wide

bargaining, has received thorough discussion in recent years. This discussion has helped to clarify the fact that there are in the United States today very few instances of complete industry-wide bargaining. Many cases of so-called "industry-wide bargaining" turn out, upon examination, to involve bargaining for a single large company or for a group of firms in a particular locality or region.

It is often forgotten that both labor and management have to agree on the scope of the bargaining unit. Where bargaining is conducted on an industry basis, this development has been the result of mutual agreement after both parties have weighed its possible effect on all aspects of the bargaining relationship.

It is important to remember that Congress itself has given thorough consideration to the issues involved in industry-wide bargaining. In 1947 during the discussion on the Taft-Hartley law by the 80th Congress, a specific proposal to ban industry-wide bargaining was rejected.

The American Federation of Labor does not endorse any particular bargaining system. We believe that the national interest is best served if unions and employers are free to choose for themselves the type of bargaining unit that best fits their particular situation. Prohibiting industry-wide bargaining by statute would inject the federal government further into the framework of collective bargaining and could only lead to disrupting peaceful labor-management relations.

Let me conclude with several summary observations.

Proposals to restrict certain union activities through application of the antitrust laws are not rooted in any demonstration of genuine need for such drastic legislative action. They are rather the reflection of a continuing effort of certain employer groups to use any means possible to carve out areas of union activity from the scope of legitimate activity.

It is not by accident that employer organizations show such zeal in seeking the extension of the antitrust laws to union activity. We suspect that these organizations hope even if they are not successful in this campaign that they will at least be successful in diverting attention from the question of enforcement of the antitrust laws to business operations.

We do not believe the particular minor or occasional activities of unions which certain employers have complained of warrant legislative consideration. But even if they did, a remedy as broad as the application of the antitrust laws is much too far reaching.

Extension of the antitrust laws to unions would place under a legal cloud many traditional and necessary union activities. In many in-

stances it would undoubtedly cut off the only effective means unions have to protect and aid workers.

The national interest is best served, not by increasing the avenues of legal entanglement for unions, but by minimizing restrictions on unions, for union activity to protect and improve worker status is in the interest of society as a whole. Any possible gain to society from curbing union activities by applying the antitrust laws would be far outweighed by the loss incurred from the stifling of union efforts in behalf of workers.

**American Federation of Labor and
Congress of Industrial Organizations**

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