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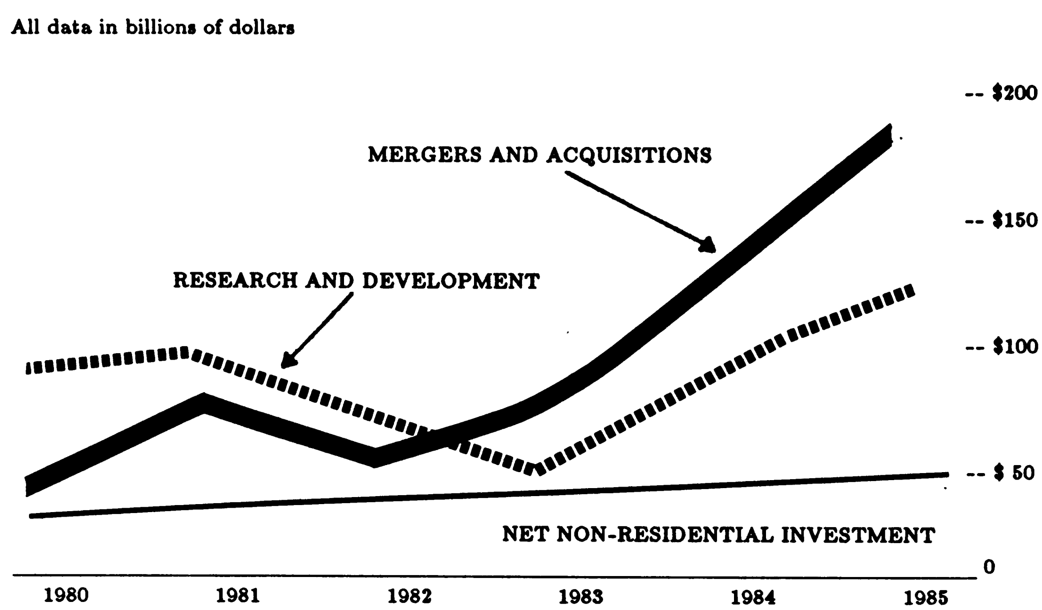
LABOR AND THE MERGER/ACQUISITION PROCESS, PART ~~II~~ 2

[by Bruce Poyer]

The traditional economic rationale for take-over and merger and acquisition activity (summarized in *LCR* 221) suffers not only from lack of political analysis, but also from a disconcerting lack of evidence to prove that a high level of such activity enhances economic efficiency. Professors Walter Adams (Michigan State University) and James W. Brock (Miami University of Ohio) contend that we usually lose sight of the most crucial aspect of merger mania -- namely, the "opportunity cost" of this dubious activity.

Adams and Brock refer to the inescapable fact that every choice necessarily entails sacrifices; that choosing one course of action necessarily means foregoing other alternatives or opportunities. Thus they write that "two decades of managerial energies devoted to playing the merger game are, at the same time, two decades during which management has been diverted from the critically important job of building new plants, bringing out new products, investing in new production techniques, and creating jobs." These authors note that in 1985, what U.S. industry spent on mergers and acquisitions exceeded its combined expenditures for research and development and for net new investment (*NYT*, June 21, 1987).

What U.S. Industry Has Spent On:



Source: W.T. Grimm & Company, Commerce Department

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The concerns of Adams and Brock are shared by Jim Hightower, Texas Commissioner of Agriculture, who notes that "Last year there were 4,022 mergers, leveraged buyouts and takeovers in this country. They soaked up $190 billion in capital. In the last three years, 9,000 companies changed owners at a cost of nearly half a trillion dollars. For what? Not for new plants, products or jobs, but for paper shuffling -- for lawyers, accountants, brokers, bankers, and big investors -- hundreds of millions of dollars paid in non-productive fees to achieve non-productive ends." (*NYT*, June 21, 1987).

The Legislative Context -- During the Teamster seminar series (see *LCR* 221), Duane Beeson urged labor organizations to demand legislative hearings on merger and take-over activities. Some fierce in-fighting is going on between a few highly-paid managers and the market raiders and opportunists, Beeson said. Millions are made on these deals, and tens of thousands of employees get hurt in the process. Labor is on the defensive, and so we must build momentum by pushing out our views to others. In the long run, the only effective protection for our members may be that which comes from legislated regulation and control of take-overs and mergers and acquisitions.

The AFL-CIO has developed a legislative approach which the Teamsters can now help to shape and implement. The approach includes proposals mandating that all contracts voluntarily entered into by a corporation -- including all collective bargaining agreements -- will be binding on the corporate successors or new owners for the terms of such contracts. The AFL-CIO also seeks legislation to prohibit the financing of corporate acquisitions by tapping a pension fund for so-called "surplus assets" (i.e., those in excess of estimated future benefit obligations of the plan).

Several AFL-CIO proposals would tighten regulation of the merger-acquisition process, including (1) more effective restrictions on insider trading, and heavier penalties for the Ivan Boesky pattern of violations; (2) earlier disclosure of large stock purchases by speculators, and more careful regulation of the tender-offer process; (3) several regulations to enhance shareholder democracy and to make it more difficult for incumbent management to entrench its position; (4) making it illegal to practice greenmail, which is the re-purchase by the company of its own stock from a corporate raider at a prohibitive price; and (5) limiting the use of golden parachutes, which are lavish severance benefits that protect top corporate officers in the event of take-overs or other financial problems.

Conclusion -- The recent retrenchment in the over-valued stock market has led to a new outpouring of criticisms about the economic performance of corporate America -- including its obsession with mergers and acquisitions. Since the annual value of mergers and acquisitions has more than doubled since 1982 (to $190 billion in 1986), there has been sufficient time for this method of corporate restructuring to improve our productivity and our trade imbalance. It has done neither. Achieving these goals will require strict new limits on financial manipulations -- like the $4.2 billion leveraged buy-out of Safeway Stores, which affected 30,000 jobs and led to 8,600 lay-offs. Improving productivity and reducing the trade deficit will require, at the least, labor policies that recognize and enhance the contributions of workers, and reduce the devastating job displacement and downgrading effects of indiscriminate corporate raiding and restructuring. Meeting these goals may also require, at the most, a new national commitment to industrial planning, in some kind of cooperative partnership arrangement between business, labor, and government.

Labor has an urgently important case to make for new governmental regulation at the very nerve center of the theoretical "free market" economy, in order to protect the exploited interests primarily of workers, but incidentally of investors as well.

by Bruce Poyer

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