



This year most debate teams are arguing a question that concerns, not only union members, but the welfare and prosperity of our entire nation. Essentially, the argument is whether labor unions should be encouraged under the law as a kind of organization that is necessary to the American system—or whether they should be outlawed as “restraints of trade.” Recently, I was invited by the Midwest Debate Bureau of Normal, Ill., to answer three questions that students are asking on this subject. This brief contains my answers to those questions. We are reprinting them here with the hope that they will help debaters and also help to inform others who are interested in avoiding a serious miscarriage of justice.

A handwritten signature in dark ink, appearing to read "A. J. Hayes". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

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LABOR AND THE

Should labor organizations be under jurisdiction of anti-trust legislation?

At the outset let it be clearly stated, and fully understood, that labor organizations and business organizations are two entirely different institutions. They are in no way comparable since the purpose of business is to make a profit, while the purpose of unions is to protect workers. Thus, legislation applicable to one is not necessarily applicable to the other.

In the case of anti-trust legislation, the purpose is to protect the public against artificial price distortions by those possessing a high degree of economic power over the economy. Since workers and their families comprise the overwhelming majority of the public, the application of such laws to worker organizations would in effect penalize—and reduce—the efforts of the majority to protect themselves against economic exploitation.

Those who support the application of anti-trust legislation to labor organizations pretend to see an equation between the commodities that business sells—and the labor a worker sells. However, easily identifiable differences between the two make such an equation patently false.

First, commodities can generally be withheld from the market, without loss of value, when the price is not satisfactory. Labor by comparison, is highly “perishable.” Any attempt to withhold it from the market when the price (that is, the wage) is too low results in an immediate and permanent loss to the worker.

Second, commodities can easily be transferred from an unfavorable to a favorable market. Labor, on the other hand, is relatively immobile, being rooted in a particular locality not only by such ties as family, friendship, church affiliation and familiarity of surroundings, but by lack of knowledge of employment opportunities elsewhere.

Third, buyers of commodities are vastly more varied and numerous than are employers of labor. In fact, in recent years a trend of corporate mergers and absorptions has concentrated greater and greater control of production and jobs into

*A man's labor is Not
a commodity to be
crated and stored*

ANTI-TRUST LAWS

fewer and fewer hands. At the present time, for example, more than one-half of America's productive capacity—and more than two-thirds of its industrial profits—are accounted for by only 150 of its largest corporations.

Fourth, owners of commodities, corporate and otherwise, normally have financial resources in cash, credit, property and inventory that workers do not possess.

Because of these significant differences, there can be no valid comparison between labor organizations and business organizations. As Congressman Emanuel Celler has so cogently summed it up, unions cannot be compared to business monopolies because they "do not have the control over the labor of their members that is enjoyed by owners over the goods they sell. No more than their individual members can unions store or ship that labor. Nor are they in a position to make unrestricted delivery of it. This imperfect control, compared to the control exercised by sellers over their goods, sharply limits the power of unions. They are not truly sellers but brokers of labor, a perishable, variable and relatively immobile product."

Thus, the test that must be applied to any legislation aimed at reducing the role and effectiveness of unions in our economic system is: would it enhance or reduce the public welfare?

In part, the answer can be found by referring to earlier years in this century when unions were weak and workers competed without union protections in the job market. The results hardly contributed to the national good since they included sweatshops, speed-ups, the exploitation of women, child labor, the 12-hour day, company towns, an appalling industrial accident rate, and a generally depressed standard of living for the working people of America.

However, these were the only results that could logically be expected, since pure competition between workers will normally be expressed in terms of who can or will set the lowest value on labor.

*Many differences
between a union and
a corporation*

*The real test for
legislation: would it
benefit the public?*

*Sweatshops, child labor,
10 hour day, do NOT
benefit the public*

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There is little reason to suppose that in the absence of a strong labor movement conditions such as these would not be repeated today.

And if they were repeated, would the public interest be served?

Are low wages and their corollary, low purchasing power in the work force, beneficial in a society where capacity to produce already threatens to outrun effective ability to consume?

Can low wages and depressed conditions in the work force provide a base of prosperity for merchants, doctors, teachers, farmers, or for industry itself?

Can America meet the challenge of rapid economic expansion in the Soviet Union with a depressed, "low wage" economy?

The answers are evident. Even the Taft-Hartley Act recognizes that without effective unions there can be no effective bargaining between employers and workers. And, without effective bargaining, wages and working conditions must inevitably sink to the level set by the most ruthless employer, and the hungriest worker.

Since the purpose of anti-trust legislation is to prevent undesirable monopolies it must be noted that this purpose would be directly contravened by application of anti-trust principles to unions. For it is only through unions that workers have achieved a measure of control over the conditions under which they labor. And if unions were destroyed, through misapplication of the anti-trust principle, this control would revert to the employer. In effect this would re-establish, under the exclusive control of self-interested employers, complete monopoly of jobs and job conditions.

It is probable that the severance of long-established bargaining relationships would initially lead to chaos in labor-management relationships. A corporation with ten separate plants would not bargain with one union for one agreement covering all, but with ten fragments for ten different agreements.

Good questions!

Employers shouldn't have it all their own way!

ANTI-TRUST LAWS

However, the unexpressed purpose of those who seek to treat unions as a "conspiracy in restraint of trade" is to achieve industrial peace by transferring to employers absolute power in the work place. And undoubtedly, this kind of peace they would eventually achieve. For it is obvious that large corporations would have little difficulty disposing of the labor movement once it was fragmented into tens of thousands of isolated parts.

And once management possessed complete and absolute power it could safely ignore any demand by workers for a greater share of their own rising productivity. And, of course, as production continued to outstrip consumption the eventual result would be economic stagnation.

In a society as highly industrialized and interdependent as ours the Federal Government could not sit idly and watch the economy die. Drastic countermeasures, involving far greater regulation of business and industry, would be necessary. In the end, free collective bargaining between workers and employers would be supplanted by complete Government regulation of the employer-employee relationship.

This necessary enlargement of the Government's role would automatically diminish the prerogatives of management. For, as employers in other countries have found, once Government takes the first step toward regulation and control of wages, hours and working conditions, the next step—to Government regulation of prices, production, markets and profits—is both short and inevitable.

Finally, it must be noted that the question implies that unions now enjoy a blanket exemption from the anti-trust laws. However, such an implication has no basis in fact. The purpose of the anti-trust laws is to prohibit a "conspiracy in restraint of trade." And though the Clayton Act specifically declares that unions *per se* are not such a conspiracy, this does not mean that unions are exempt from prosecution when they engage in activities (in concert with employers) that do, in fact, constitute a restraint of trade.

*No peace by
suppression.*

*If management has
absolute power, the
Government will
have to act.*

*Unions are now
subject to Clayton
anti-trust act.*

"Show me a country in which there are no strikes and I'll show you a country in which there is no liberty."—SAMUEL GOMPERS

LABOR AND THE

Is organized labor too powerful
in the United States?

Any attempt to compare the so-called "power" of organized labor with the all pervading influence of big business in our society becomes ludicrous upon rational examination of the evidence.

Although organized labor directly represents some 18,000,000 workers and seeks to advance the economic, social, and political welfare of all workingmen's families, its effectiveness is seriously impaired by the control that businessmen exert over the nation's press, television, radio, magazines, advertising and other media of public information and understanding. One result of this control is, of course, that political candidates friendly to labor are invariably handicapped by a hostile and unfair press.

A further result is that the wishes and views of big business outweigh those of labor at all levels of government, from local school boards to the Senate of the United States. Accordingly, it is not labor, but the business community that selects the Nation's textbooks as well as the Nation's laws. This was dramatically illustrated in the 1961 session of Congress.

Although labor fought, and fought hard for such desperately - needed national programs as Federal aid to education, medical care for the aged, minimum standards that would protect migrant farm workers against merciless exploitation, and the plugging of special tax exemptions for the very rich, these measures were buried under the disapproval of such affluent and politically influential groups as the National Association of Manufacturers, the U.S. Chamber of Commerce, the American Medical Association, the American Farm Bureau, and the oil and gas industry.

Similarly, in most State legislatures, years of effort by organized labor have failed to achieve basic and long overdue reforms in antiquated workmen's compensation, unemployment insurance, and factory inspection laws.

In looking at the myth of "labor's power" it is also necessary to consider that not a single union

*Big business
has the power*

*Business dominated
Congress in 1961 !!*

State legislatures, too!

ANTI-TRUST LAWS

in the country has assets that compare with those of the large corporations that dominate the American economy.

The resources of the United Auto Workers, for example, are microscopic as compared to those of any single producer in the auto industry. The total assets of the United Steel Workers, after a quarter of a century of operation, are only a fraction of one year's net profits of any of the major steel producers. The reserves of the Machinists Union, including the value of its head-quarter's building, amount to less than \$25 a member. And so it is in industry after industry.

As a result of industry's financial and political advantage—and despite the distortions of the press—industrial democracy is far from being realized in the United States today. In the 1960's, as in the 1930's, organizers are still being beaten by company inspired police or company hired thugs.

Workers who desire to exercise rights supposedly guaranteed them by well defined Federal Legislation are still subject to economic, and sometimes physical, reprisals. And, as the workers in Henderson, N.C., and Winchester, Va. know well and bitterly, even a long-established union tradition can be crushed by the economic power of an implacable employer, especially if that power is supported by court injunctions, imported strikebreakers, biased newspaper reporting, brutal police tactics, and the presence of the State militia.

Actually, the campaign to fragment the labor movement under the pretense of anti-trust comes at a time when union strength is declining due to such factors as automation, chronic unemployment, unfair labor legislation and a consistently biased press. Under such conditions, and with only one worker in four organized, labor's ability to maintain decent working standards is already less than the level needed to insure a healthy balanced economy.

Finally, it should be noted that if organized labor were as powerful as its enemies claim, this power would be reflected in a simple analysis of income distribution in the United States.

*Truth about union
finances: union
reserves = \$25 per
member*

*Stronger unions are
needed to balance
the economy*

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It would be expected, for example, that the people most likely to be represented by unions—i.e., the lower income families—would be increasing their share of the total National income at the expense of those in the upper income brackets. However, such is not the case.

In 1944, for example, 60 per cent of the Nation's families—i.e., the lowest three-fifths—received only 32 per cent of all family incomes in the United States. The upper two-fifths of the income groups received the other 68 per cent, with almost two-thirds of *this* going to the families in the top fifth. Today, 17 years later, these ratios are almost exactly the same. The families included in the lower three-fifths of all income groups receive only one-tenth of one per cent more of the National total than they did in 1944. Thus, it is evident that while the rich have stayed rich, the relative position of workers has not changed.

The illusion of labor's overwhelming and irresistible strength which prevails in spite of the above may be due in part to the fact that when organized workers are forced or driven to strike, editorial writers customarily view with alarm this evidence of "great power" by unions to stop industrial production. Yet few of these same editors have ever challenged or questioned the far greater power of industrial managers to stop production and to close factories, sometimes temporarily, sometimes permanently, without regard for the welfare of either the work force or the community.

As Professor James Kuhn of Columbia University has noted, "The unions' ability to stop production when others wish it to continue is not unique. Only the public resentment of union stoppages is unique. Managers stop production and reduce output for months on end despite the readiness, willingness and desire of workers to work. Few question the throttling down of factory production, though unemployment probably is a lingering, wasting cancer more destructive than the clean, swift wound of strikes."

*Our one-sided
newspapers*

"When the laws undertake . . . to make the rich richer and the potent more powerful, the humble members of society have a right to complain of the injustice of their Government."

—ANDREW JACKSON

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Do unions take unfair advantage of employers in collective bargaining negotiations?

Since organized labor is a human institution made up of human beings it is not possible to say that every union has always bargained with complete responsibility. However, it must be recognized that in any bargaining situation the employer holds certain economic trumps that make it far easier (and more typical) for him to exploit workers than for unions to take unfair advantage of him.

Not only does management enjoy superior financial resources and political power, but it is management that owns the jobs. Though workers have organized for the purpose of gaining an equity in their jobs based on years of service, it is management in the final analysis that controls the availability and number of jobs. This, in itself, is a powerful bargaining weapon.

Moreover, a union's demands must always be tempered by the realization that management must remain competitive and profitable. In other words, a union cannot bargain in a way that will destroy an employer's incentive to remain in business. For to do so would be self-destructive.

If the employer goes out of business or moves the plant because of unrealistic union demands, it is union members who lose jobs. This not only places a self-regulating brake on union demands, but motivates unions to make special efforts to help employers who are in a bad competitive position.

In practice, as well as in theory, unions are acutely aware that the prosperity of workers depends on that of employers. A real problem for America rises from the fact that so many corporate managements do not understand that the principle works both ways. Though workers obviously cannot enjoy prosperity and good wages if management is unprofitable, management, by the same token, cannot enjoy the benefits of an expanding economy if workers are poorly paid.

All of these factors, taken together, place a definite limit of reasonableness on unions' activities. And, as can be easily demonstrated, this

Employer holds the trumps

Labor knows company must profit.

LABOR AND THE

limit has been observed by the overwhelming majority of the Nation's unions over the course of many years.

First, if unions had been taking unfair advantage of employers in collective bargaining, the evidence would be easily observable in the declining profits of industry. However, the evidence actually points the other way. Not only have corporate profits *after* taxes, plus depreciation set-asides, *doubled* since 1953, but the mass production industries in which unions have been strongest (steel, automobile, rubber, aircraft, and electrical equipment) have all made substantial progress in the 25 years since these industries were organized.

Second, while industrial productivity has increased 20.9 per cent since 1953, unit labor costs (including all fringe benefits) of production workers have increased only one-tenth of one per cent. By comparison unit *salary* costs (again including fringe benefits) of white collar workers (including executives at the management level) have increased 33 per cent!

In this connection it is appropriate to point out the relationship between labor's long-term drive for better wages and management's continuing search for greater productivity.

It is no accident that the American worker is also the most productive worker in the world. Before workers formed unions it is true that wages were low, but individual productivity was also low. In effect, labor was cheap but production was expensive. But when unions drove the price of American labor above the subsistence level, management was compelled to find ways to use this more expensive labor more economically.

Thus, unions acted as a catalytic agent for technological progress. Instead of seeking profits through exploitation of cheap labor, management began to develop labor-saving machines and adopt better and faster methods of production. This interaction, between increased wages and intensified technology has given America the industrial leadership of the world.

*Proof of the pudding:
Business profits have
doubled!*

*Unit labor costs
show the true picture*

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Today, the United States, with 6 per cent of the earth's labor force, produces more than 50 per cent of the world's goods.

Finally, this whole question must be analyzed in context with the long-range struggle between capitalism and communism in the world. Assuming that mankind escapes nuclear destruction, America must nevertheless realize that it is engaged in long-term competition to prove that democratic free enterprise provides the world with the best formula for meeting its human and economic needs.

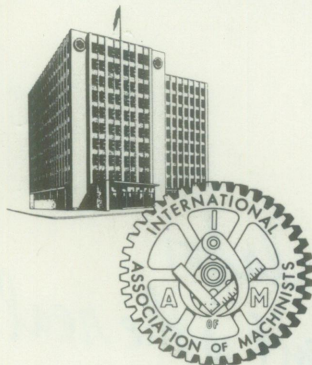
In other words America must provide the world with a real alternative to communism. And since a free labor movement is an integral part of the system of democratic free enterprise (as witnessed by the fact that democracy has never survived the destruction of the labor movement in any country.) America without its labor movement would provide the world with no real alternative at all.

It is indeed ironic that while America seeks to show Asians, Africans and others how to build a strong labor movement as a base for democratic free enterprise, its own labor movement at home is constantly threatened and harassed by the threat of legislation, the effects of which are little understood by either those who support it or those who would suffer because of it.

*The free labor
movement is the real
alternative to
Communism.
Don't weaken it!*

"In its majestic impartiality, the law forbids both the rich and the poor to sleep under bridges."—ANATOLE FRANCE

Labor monopoly
(1962 folder)



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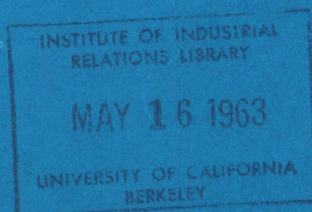
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**Men
and
Monopolies :**

A brief for debaters



LABOR AND THE ANTI-TRUST LAWS