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FOREWORD

The National Chamber has long advocated that harmful monopoly power of labor organizations should be controlled by application of the antitrust laws.

In order to understand the problem it is important to know how these powerful organizations came to have antitrust law immunity. One authority states that labor unions may restrain trade and yet have immunity from what is often the most effective remedy, the antitrust laws.

This document gives the historic background of the enactments of Congress and the principal court decisions which have brought about this immunity.

November, 1962

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EARLY LEGISLATION DEALING WITH MONOPOLY

The people of the United States have long looked with disfavor upon organizations or combinations which exercise monopoly power. The first steps to combat such tendencies by law took place in the 1870's in the Midwestern states, through enactment of the so-called Granger Laws to fix maximum intra-state railroad rates.

The public attitude in that period was one of animosity towards any organization which increased rates or prices through the control of the market. That federal action was imminent became obvious when Congress in 1887 set up the Interstate Commerce Commission to regulate interstate problems posed by freight and passenger transportation.

What the public regarded as railroad rate abuses, moreover, caused a number of the states to enact legislation. By 1890 sixteen states prohibited combinations or restraints either by statutes or by constitutional provision. A good example of such legislation in the Midwest is embodied in one statute which made illegal any "pool, trust, agreement, combination, confederation or understanding with any other cooperation, partnership, individual or any other person or association of persons to regulate or fix any article of manufacture."

Most of the states continue to have legislation on their books directed at monopoly and restraint of trade. Public sentiment was sufficiently widespread that in 1890 Congress undertook to assure competition by enacting the Sherman Act.[1]

Compared with many statutes the Sherman Act is brief and apparently quite simple. It contains two propositions that deserve special notice:

[1] Act of July 2, 1890, 15 USC ##1-7.

One sets forth that "every contract, combination in the form of a trust or otherwise, or conspiracy, in restraint of commerce among the several states, or with foreign nations, is declared to be illegal."

A second section sets forth a further proposition that "every person who shall monopolize or attempt to monopolize or conspire or combine with any other person or persons, to monopolize the trade or commerce among the several states or with foreign nations, shall be deemed guilty of a misdemeanor."

SHERMAN ACT AND COURT INTERPRETATION

Labor organizations contend that Congress had no intention whatever of including them when the Sherman Act was passed, but that the purpose was to strike at monopoly and restraint of trade abuses by businessmen. The reasonable view does not hold this limiting interpretation of the law. Since at one time the courts had deemed certain activities of organized workers as criminal conspiracies, it is probable that Congress, in line with history and the broad language used in the Act, intended to strike at monopoly and trade restraint evils wherever they might appear—whether caused by management or labor.

Early in 1908 the so-called Danbury Hatters Case [2] came before the United States Supreme Court in a test of a complaint under the Sherman Act that asked for triple damages. The Court upheld the complaint and ruled that trade unions came within the purview of the Sherman Act. The conduct found by the Court to be illegal was a nationwide customers' and secondary boycott perpetrated by the United Hatters of North America with the aid of the American Federation of Labor and affiliated and local unions. The dispute arose in an effort by the Hatters Union to organize, among others, a non-union hat company at Danbury, Connecticut.

The Court left no doubt as to its view in the case, stating that "the Act prohibits any combination whatever to secure action which essentially obstructs the free flow of commerce by the states, or restricts in that regard, the liberty of a trader to engage in business."

There was widespread and emphatic antipathy toward the Danbury Hatters decision within the labor movement and among its friends.

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[2] Loewe v. Lawlor, 208 U.S. 274, 28 S. Ct. 301, 52 L Ed. 488 (1908).

One reason probably was that the monetary judgment of the court in the case was enforceable against workers or union members. Whatever ruling the cold language of the statute might have allowed, the practical effect of the judgment that could be enforced against the property of workers was, in the social scheme of things, a mistake. Correction of this social error has been included in some of the recent legislative proposals to make labor unions liable under the antitrust principles.

THE CLAYTON ACT—NO IMMUNITY TO LABOR

Union leaders endeavored to get the effect of the Danbury Hatters decision changed by Congressional action. In the 1912 political campaign Woodrow Wilson and his party repeated a stand taken in 1908 and committed themselves to such a legislative change.[3] A result was enactment of the Clayton Act [4] in 1914.

Two sections of this law were deemed by organized labor to be of great importance. Section six stated that "the labor of human beings is not a commodity or article of commerce." This section further provided that "nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor . . . organizations, instituted for the purpose of mutual help, and not having capital stock or conducted for profit or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade under the antitrust laws."

Section 20 of the Clayton Act contained language which, at that time, was deemed to grant organized labor freedom from the writ of injunction. This language barred federal injunctions which would prohibit such acts as strikes, boycotts, or picketing in the course of a labor dispute "concerning terms or conditions of employment."

Those who thought of the new law as a labor Magna Charta found themselves greatly disillusioned by decisions of the United States Supreme Court, which in effect held that the Clayton Act did not change substantive laws at all but was declaratory of what the law

[3] See 1912 Democratic Platform.

[4] Act of Oct. 15, 1914, 15 USC ## 12, 15, 15A, 15B, 16, 17, 25-27; 28 USC ## 381-383, 386-390; 29 USC #52.

had always been with respect to lawful and unlawful conduct during labor disputes.

Thus in the Duplex [5] and Bedford Cut Stone [6] Cases in the 1920's, the Supreme Court held that Section 20 of the Clayton Act was limited to a dispute between an employer and his own employees. These cases involved what are generally called secondary boycotts.

Also in the 1920's the Supreme Court issued a decision in the so-called second Coronado Coal [7] case declaring that union efforts to keep the plaintiff's non-union mined coal out of the interstate market was restraint of trade which violated the Sherman Act.

The use of antitrust injunctions in labor dispute cases during the 1920's became a very common practice, and the records of the trial courts are replete with such instances. Both the Duplex and Bedford Cut Stone cases mentioned above are examples of their use.

EFFECT OF NORRIS-LaGUARDIA ACT

Organized labor and its friends urged strongly that federal courts ought to be precluded from issuing injunctions in labor disputes. The demand for such legislative change brought the Norris-LaGuardia Act [8] of 1932. Signed by President Hoover and a landmark in the history of management-labor relations this law contained language that has virtually stopped the issuance of federal court injunctions in labor disputes. It defines a labor dispute as "any controversy concerning terms or conditions of employment . . . regardless of whether or not the disputants stand in the proximate relation of employer and employee."

During a few years immediately after the enactment of the Norris-LaGuardia Act, there were no important decisions regarding application of the antitrust laws to labor organizations. Probably the depressed economic conditions of the 1930's constituted the principal factor.

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[5] Duplex Printing Press Co. v. Deering 254 U.S. 443, 41 S. Ct. 172, 65 L Ed 349 (1921).

[6] Bedford Cut Stone Co. v. Journeymen Stone Cutters' Association 274 U.S. 37, 47 S. Ct. 522, 71 L Ed 916 (1927).

[7] United Mine Workers v. Coronado Coal Co. 268 U.S. 295, 45 S. Ct. 551 69 L Ed 963 (1925). In an earlier consideration of the case on different allegations the Supreme Court had found no implied intent to obstruct interstate commerce and hence no violation of the Sherman Act.

[8] Act of March 23, (1932), 29 USC 101-115.

With the coming of World War II, however, and the resultant war economy, the issue again arose, and in 1940 an antitrust action came to the Supreme Court from efforts of a hosiery workers' union three years earlier to organize a hosiery manufacturing plant in Philadelphia. The plant had about 2500 workers, only eight of whom belonged to the union. The company refused a closed shop demand. Thereupon union members from other plants appeared, acts of violence ensued, and the union adherents staged a sit-down strike taking over and holding the plant from about May 6, 1937, until June 23, 1937, when a court injunction expelled them. There was serious destruction of plant property and machinery, and operations could not be resumed until August 19, 1937. No shipments could be made during the strike.

The Supreme Court, upholding a Circuit Court of Appeals decision and reversing the trial court, held in Apex Hosiery Co. v. Leader [9] that there was no violation of the Sherman Act. It took the view that the Act was not designed to deal with interference with interstate commerce that might result from a union's organizational efforts. Chief Justice Hughes wrote a vigorous dissent, and was joined by Justices McReynolds and Roberts.

In 1941 a more far-reaching decision, that has been deemed to settle the issue of unions and antitrust liability, was rendered by the Supreme Court in the case of U. S. v. Hutcheson.[10] The case arose from a strike and boycott by a union against an employer who had assigned work to employees in a competing union. The defendants were tried for alleged criminal combination and conspiracy in violation of the Sherman Act.

The Court majority found that, since the Duplex Case, the policy of Congress had been made clear by the Norris-LaGuardia Act. Union activities aimed at furthering union objectives were therefore excepted from the Sherman Act, it being necessary to read the Sherman Act, Section 20 of the Clayton Act, and the Norris-LaGuardia Act as a harmonizing text. The Court found further that, since the Norris-LaGuardia Act immunized employees and their unions from injunctions on account of such conduct, the principle was also

[9] 310 U.S. 469, 60 S. Ct. 982, 84 L Ed 1311 (1940).
[10] 312 U.S. 219, 61 S. Ct. 463, 85 L Ed 788 (1941).

intended by Congress to apply to criminal antitrust actions. It sustained a ruling of the lower court in favor of the defendants.

The rationale of the Hutcheson Case has been described as limited to situations "where a union acts in its own self interest and does not combine with non-labor groups. . . ."

The rule in the Hutcheson Case was correspondingly applied in a civil suit, in Hunt v. Crumboch.[11] A drivers' and helpers' union demanded closed-shop agreements with A & P, and called a strike to obtain it. Hunt, for 14 years a contract trucker for A & P, undertook to operate notwithstanding considerable strike violence. A & P granted the closed shop and notified Hunt and the other contract truckers that their employees must join the union. Hunt held out against the closed shop, the union refusing to negotiate with him or to admit any of Hunt's employees to membership. The union caused A & P to cancel Hunt's contract, and Hunt was not able to obtain further hauling contracts in the area. When Hunt sought an injunction and damages under the Sherman Act, the Supreme Court upheld the lower courts that there had been no violation.

Justice Jackson issued a vigorous dissent, in which he stated, "Those statutes which restricted the application of the Sherman Act against unions were intended only to shield the legitimate objectives of such organizations, not to give them a sword to use with unlimited immunity." He further stated: "This Court permits to employees the same arbitrary dominance over the economic sphere which they control that labor so long, so bitterly and so rightly asserted should belong to no man."

The same year, however, the Supreme Court held there was a violation of the Sherman Act in situations where there was a union-employer scheme to monopolize. The case in which this rule was laid down was that of Allen Bradley Company v. Local Union No. 3.[12] Local No. 3 consisted of the electrical workers in the New York area. The union agreed with "contractors . . . to purchase equipment from none but local manufacturers who also had closed shop agreements with Local No. 3." It also agreed with manufacturers "to confine their New York City sales to contractors employing the Local's members."

The Supreme Court, reversing the lower appellate court, stated that the agreement in question "was but one element in a far larger

[11] 325 U.S. 821, 65 S. Ct. 1545, 89 L Ed 1954 (1945).
[12] 325 U.S. 797, 65 S. Ct. 1533, 89 L Ed 1939 (1945).

program in which contractors and manufacturers united with one another to monopolize all the business in New York City . . ."

In explanation of its holding, the Court further said: "Our holding means that the same labor union activities may or may not be in violation of the Sherman Act, dependent upon whether the union acts alone or in combination with business groups."

Two years later there was an extension of the Allen Bradley principles in Hawaiian Tuna Packers v. International Longshoremen and Warehousemen Union.[13] Denying the defendants' motion to dismiss, the Court found that a demand to fix prices, participated in by a crewmen and owner-crewmen combination, constituted a violation of the antitrust laws.

THE DOUBLE STANDARD OF JUSTICE

As a result of action by Congress and court decisions, what would be antitrust violations by a business organization or by business groups are not violations when performed by labor unions, as long as the unions involved act in their self interest and do not combine with non-union groups.

". . . the rightness or wrongness, the selfishness or unselfishness of the end of which the particular union activities are the means,[14] are not matters to be considered.

Repeated efforts to hold unions liable for antitrust conduct when not carried out in combination with business groups have failed. Thus our laws as they stand today embody a double standard of justice. Acts which would bring both civil and criminal liability under the antitrust laws when performed by business groups, bring no liability at all when performed by labor groups.

The enormous power of unions today and the abuses which have resulted from this power present compelling reasons for Congress to correct this unfair double standard. The public interest requires such action by Congress.

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[13] 72 F Supp. 562 (D. Hawaii, 1947).

[14] U.S. v. Hutcheson; see footnote 10 supra.

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