August 1955

Reader's Digest

ARTICLES OF LASTING INTEREST • 34th YEAR OF PUBLICATION

SHOULD UNIONS HAVE MONOPOLY POWERS?

By W. L. White

SHOULD UNIONS HAVE MONOPOLY POWERS?

For 65 years the Sherman Antitrust Law has effectively protected American citizens against the evils of monopoly—except in one important area. Our labor unions—unintentionally exempted from Sherman-Act control—now legally use the crippling powers of monopoly

By W. L. White

TO PROTECT the American people from monopolies, the Sherman Antitrust Act was passed in 1890. For half a century thereafter, the trust busters under Theodore Roosevelt and other reformers crusaded for its effective enforcement. But in one important area that crusade has failed dismally. The antitrust law has little application to labor unions. The result is that monopolistic practices, in clear restraint of trade by any common-sense test, are rampant.

Price-Fixing. In a growing number of cities the price of your milk is set, not by the farmer or the dairy or the storekeeper, but by a local union-leader. In the laundry and dry-cleaning field, unions have stopped competition by putting price-cutting independent firms out of business.

In 1940 a real effort was made to check this. Thurman Arnold, then an Assistant Attorney General for Franklin D. Roosevelt, acted to protect the buying public. Among others, Local 202 of the Teamsters Union in New York City was indicted for "conspiring by enforcing through intimidation and coercion" conditions of transport, delivery and sale of fruit, eggs, butter and other dairy products.

Mr. Arnold testified before the Senate Committee on Banking and Currency that the Teamsters and the building unions were "adopting the same tactics that the Supreme Court had condemned in the case of the Aluminum Co. of America—dividing territories where goods could be sold, erecting protective tariffs around communities and creating a condition of scarcity."

But the Assistant Attorney General was forced to drop these and many other anti-monopoly prosecutions involving labor. For in 1941 the Supreme Court—by a 6-2 decision in the Hutcheson case, which has been severely criticized by legal scholars—ruled in effect that there is an anti-trust immunity for labor unions.

The Congress which passed the Sherman Act had not intended to exempt anyone. Indeed an attempt to write an exemption for labor unions into an early draft of the Norris-La Guardia bill was stricken out by Congress before the bill passed in 1932. But the Supreme Court ruled that the combined effect of the Norris-La Guardia Act and the 1914 Clayton Act gave unions virtually complete immunity from antitrust laws.

The consequences of the ruling were felt immediately. Teamsters Local 202, for instance, established union-approved price lists for dairy products. Any company selling for less was boycotted, picketed or threatened with strikes. This had become legal—neither the firm nor the consumer now had adequate protection.

Regional Monopolies. In the 1930's, several New York manufacturers of electrical equipment undertook to hire only members of Local 3 of the International Brotherhood of Electrical Workers (AFL). The union in turn refused to install, in New York City, any fixture not made by this small group of manufacturers. Even fixtures made in plants employing members of other locals of the same union were excluded.

Everybody benefited—except the public, which had to pay the dictated prices, and manufacturers who were not in the combine.

In 1945 the Supreme Court ruled that monopolistic price-fixing was legal only when imposed by the union alone, not in open collusion with a manufacturer. The decision had little effect on the problem. As Mr. Arnold points out, a corporation can still enjoy the fruits of such a labor-capital monopoly, provided the "suggestion should come from the union." The businessmen can then plaintively insist, "We are doing it at gunpoint."

Although it no longer publishes an approved list of manufacturers, Local 3 still controls all electrical equipment installed in New York.

Every building contractor knows that if he specifies materials frowned on by unions he deals with, he is courting trouble. True, the Taft-Hartley Act prohibits secondary strikes. But there are slowdowns, faulty installations or stoppages on other pretexts. In theory the locals might be liable for damages. In practice no New York contractor would dare testify, for fear of the union's power to bankrupt him.

Dividing territory—forbidden to businessmen under the antitrust legislation—is a common union practice. At a Congressional hearing, Fry & Son, Chicago roofers, testified that they had been ordered

by their union not to operate north of 47th Street, where they would compete with another unionized roofer. When they continued to operate, their labor supply was cut off and builders were notified that they would be put out of business if they engaged Fry & Son.

Local 807 of the Teamsters has carved out New York City as its feudal barony. The Schultz Co., truckers, once maintained a terminal and delivery service in New York, employing members of Local 807. They then decided to move across the Hudson River into New Jersey, where they hired members of the same union's New Jersey local. But when these drivers tried to make deliveries to old Schultz customers in New York, Local 807 picketed their trucks. This meant that most New York warehousemen would not unload them. The National Labor Relations Board found this legal. Schultz was forced to liquidate his trucking business.

Products and Processes Banned. New machines and more efficient processes which save time and labor are the lifeblood of economic progress. Anything which hinders their use is clearly restraining trade. Yet restraint is being imposed openly by many unions.

In Chicago, unions for 20 years banned ready-mix trucks for concrete. They favored the old puddling method, more costly to builders and taxpayers. An antitrust prosecution to break this up had to be dropped after the Supreme Court's Hutcheson decision. The ban was raised only a few years ago.

Suppliers of building materials have found it more economical for the home buyer to install glass in window frames at the factory rather than on the construction site. Chicago unions forbade such pre-glazing. The struggle then moved to nearby Joliet, where Glaziers Local 27 prohibited members from working for contractors using pre-glazed windows.

The Grant Hardware Co., remodeling its ground floor, needed ten plate-glass windows. But Local 27 detected, on the second floor, 14 pre-glazed windows installed two years before. It refused to work until the store had removed the offending windows and ordered 14 new frames, into which glaziers then fitted glass.

Sears, Roebuck was building a new store in Joliet. Its interior showcases were arriving pre-glazed. Local 27 refused to work on the display windows on the street until it was agreed all glass would be removed from pre-glazed showcases and reglazed by union members on the job. In deference to the Taft-Hartley ban on secondary strikes, the Joliet glaziers avoided *walking out* on any job. They simply refused to *begin* work.

Restraints on trade are especially common in the building trades. For example, the unions often bar paint rollers and spray guns, in tasks where these are more efficient than brushes. This automatically rules

out certain materials which must be sprayed, not brush-painted, as well as special paints that can be applied only by spraying. Paintbrushes are in many places limited to four inches in width. Another familiar example: factory-wired switchboards or other appliances arriving on the job must be disassembled, then solemnly rewired. According to reliable estimates, every fifth dollar spent on new housing is thrown away by such practices.

"Featherbedding." To shield the public against useless work imposed by unions ("featherbedding") the Labor-Management Act calls it an unfair labor practice to force an employer to pay for services "which are not performed, or which are not to be performed."

A recent development permits type to be set automatically from punched tape. The typographical unions allow it, but usually require that an exact duplicate of the type be set by hand, proofread, corrected —then dumped into the melting pot! The Labor-Management Act would seem to bar extortions of this nature. But in 1953 a Federal Court of Appeals decided that setting this useless type was still a "service performed," *whether or not the employer wanted it.*

But what of unneeded and unwanted workmen who do little or nothing? The law provides no remedy.

A truck gardener in Hammonton, N. J., delivers sweet potatoes, grown and packed on his own farm, to Albany. In addition to a union driver, he is required to hire a "helper" who, when the truck gets to Albany, moves the crates onto the truck's loading platform. The helper works only inside the truck. Other union warehousemen pick the crates up to carry them into the warehouse. The driver may not touch a crate, the warehousemen may not enter the truck. No matter how small the load, the helper must be paid $14.82 a day, which of course shows up in the price of sweet potatoes.

Trucks headed for New York City, whether driven by owners or by union members, may have to stop at the Holland Tunnel, the George Washington Bridge or another entry point. For they have reached the frontier of the dukedom of Teamsters Local 807. Here the "foreign" truck usually takes aboard an extra New York driver, at the cost of a full day's pay. This union recognizes no foreign union-cards within the confines of its domain. The surplus driver only sits there. Unless he is paid, warehousemen affiliated with the same local will refuse to handle the goods. Should an owner-driver dare to unload his own truck, they will tie up the entire warehouse by walking out.

This practice, too, is legal. Under the Court of Appeals' 1953 ruling, it seems reasonable to assume that the spare driver was "available" for work, even though he did none.

Then there is the Stage Hands Union, which regards everything in

a theater as part of its domain, regardless of the type of work involved. Suppose the owner wishes to remodel, to change the seats in his theater. In such a case, for every workman needed on the job, a stagehand must also be employed.

In New York, on any construction job costing more than $5000 and above the fifth story, some unions force the contractor to hire a "hoisting engineer," at about $150 a week, to run an elevator. Since most buildings have their own elevator operators, this man is useless.

Sometimes in such cases the union's business agent is known to have been coöperative. "This should be about a four-week job," he tells the contractor, "which might cost $600 for a hoisting engineer. But to you I'll make it only $550." In cash, of course. No hoisting engineer ever reports for work, the contractor has saved $50 and the owner must add $550 to his costs. Even the Supreme Court could hardly help viewing this gambit as extortion, since the engineer never reported to "work." The contractor would have a legal right to sue the union—if he dared.

Limiting Competition. In more and more cities, the building contractor's right to do business is openly and legally controlled by the unions.

"When you start in the contracting business you are at the mercy of the building trades unions," one New York contractor explains. "They decide whether or not they'll let you operate. They want to be sure you're going to play ball with them. You fill out applications, pledge to hire only union members and to send in so much per month for every man hired, for the union's 'welfare fund.' This is money the workman may never see, but the totals run into millions. If the union leaders don't like you, that's the end of your contracting career."

In other large cities, union control is even tighter. The would-be building contractor must get from the unions what amounts to a "certificate of necessity and convenience." Often they say, "No, we don't want to do business with you. There are enough contractors." That means he can get neither workers nor truck drivers, and many suppliers will not risk union boycott by selling him materials.

The situation is not much better in smaller towns. In a typical city of 50,000 there will be 100 bricklayers in a union which accepts no apprentices. Six contractors keep them busy all year, and competing contractors are excluded. This capital-labor building monopoly can and does charge all the traffic will bear, with the public footing the bill.

The legal right of a union to put an employer out of business for any or no reason is hardly disputed. For 14 years Hunt Brothers had been one of several truckers for the A & P company in Philadelphia. The trucking unions struck Hunt Brothers to compel a closed shop. There was some violence. To avoid more trouble, A & P signed a closed-shop

contract with the union and informed its truckers that they must comply.

The union, however, didn't care for Hunt. It refused to admit his drivers, nor would it send him drivers already in the union. Hunt invoked the Sherman Act, charging that this open union monopoly had ruined his business. Five Supreme Court Justices upheld the union's monopoly privileges. One of the dissenters, Justice Robert Jackson, wrote that the Court now "permits to employes 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 monopoly principle is tightening a noose around the throat of American newspapers. Why are there ever fewer of them? The cost of printing, in terms of a paper's revenue, runs "from five percent to the largest newspaper to about 50 percent to the smallest," Thurman Arnold has pointed out. The little newspaper is at a terrible disadvantage, being less able to bear the burden of featherbedding. Mr. Arnold told the Senate that he found this "one of the reasons why the newspaper business is becoming so rapidly consolidated, and the little people are going out of business."

In November 1953 the Photo-engravers Union struck Manhattan's giant dailies, six of the Big Seven; members of the American Newspaper Guild refused to cross the picket line. Was this a secondary strike, an "unfair" practice? Neatly circumventing Taft-Hartley, the Guild took no official stand, but individual members refused to cross the picket line, contract or no contract.

Organized labor's most recent venture in this field is the century-old Brooklyn *Eagle,* once edited by Walt Whitman and many times a Pulitzer winner. Always under the shadow of the Manhattan papers, the *Eagle* last year lost money. Its turn for "treatment" came this year. Guild members were getting a top scale of $131.50—eighth from the top among America's leading papers, surpassed only by the $138.50 scale of Manhattan's Big Seven. But in January the Guild demanded more pay. Members of nine other craft unions (their contracts were still in force) refused to cross the guild's picket line. Was this a violation of the law? An agent of the typographical unions explained that he had not ordered his men to quit. Nor would he order them back—his burly pressmen might get "mauled" by the picketing society editors, the stenographers and the reporters.

In mid-March, the *Eagle* publishers announced they were quitting business, permanently. Some 600 strikers were out of jobs, and New York's shrinking newspaper world had one less paper.

Limiting Jobs. Recently the Senate heard the testimony of a small businessman. Just after the war, he was listing job opportunities for re-

turning veterans, and asked the head of the typographers in New York if his union would coöperate by admitting more veterans.

His answer was a blunt and emphatic "No!" To become a member of that union you had to be the son of a member, or the relative of a member if the member had no son, and he concluded by saying: "That goes for veterans, too. You are wasting your time."

Unions limit job opportunities in some building trades almost as severely. The average age for painters in New York, for instance, is 60; in the country as a whole, 55. To preserve their job monopoly with its attractively high wage, these shrewd operators admit few new applicants each year.

In 1954 the plasterers admitted 524 new apprentices to their union, the bridge structural and ornamental iron workers 1018, the cement masons 756. The entire building industry, according to figures from the Department of Labor, admitted only 32,350 new apprentices in 1954, union and non-union, and labor's critics charge that even this low figure may be inflated.

Considering the advanced age of union membership, if these policies continue, roofers will soon be scarcer than Confederate veterans. But young men just out of school and seeking jobs will have to look elsewhere, for it is almost but not quite as hard to get admitted to the New York Racquet Club as it is to get into a building-trade union.

It is a favorite sport for labor leaders, in convention assembled, to bellow at the Government for not reducing unemployment. Yet clearly they create it themselves by excluding thousands of youngsters in order to preserve and increase their hourly wage-scales. All of this is legal.

"Unfair" Strikes and Boycotts. Though officially branded as "unfair," secondary strikes and boycotts carry no penalty. The victim merely has the right to sue the union if he dares. As interpreted, the law has done little to protect either the public or the employer caught in the struggle between rival unions.

In 1938 the employes of Neon Products in Lima, Ohio, in a Government-supervised vote, selected a CIO union. The company was getting large orders for signs from chain stores, but in 1945 it ran into trouble. The International Brotherhood of Electrical Workers (AFL) slapped a nation-wide boycott on the company's signs. Immediately AFL electricians in St. Louis, New Orleans, New York, San Francisco and elsewhere refused to install the signs because they bore a CIO label. Soon the company had on its hands a huge warehouse filled with returned signs. Neon was having no dispute with its workers. The only issue was which set of labor officials would collect their union dues.

The federal law had guaranteed their right to choose the CIO. But it could not guarantee that the products of their labor could break through an airtight AFL monopoly

on installation. The AFL took the position that this was no strike; it merely "refused to instruct" its men to work on CIO signs. To stay in business, Neon opened a second factory in Kokomo, Ind., this one organized by the AFL. The Lima plant could have handled all orders. Both plants now run at part capacity: $200,000 has been wasted in an unnecessary plant, $150,000 is spent annually in duplicate operating and management expenses. But the AFL now gets its cut of Neon's union dues.

Macy's department store in New York was threatened with a picket line, because one of its 15,000 suppliers had a subcontractor who was having labor troubles. The picket line, giving the false impression that Macy's was "unfair" to its employes, was a gun in Macy's ribs, forcing them to put pressure on the supplier to put the squeeze on his subcontractor to yield to the union's demands.

In another instance, a picket line was thrown across the entrance to Yankee Stadium by Musicians Local 802. Neither ball team had been unfair to any musician. But their game was being described over a microphone, and thence carried to Station WINS, with whom Local 802 was having an argument.

Coercing Non-union Workers. In the 1930's labor deservedly won its long, hard fight for the right to organize. It is possible today to get a secret election, federally supervised, in any plant. As a result, about 25 percent of America's working force of 63 million belong to unions.

Congress also tried to guarantee the right of the 75 percent who prefer to stay out of unions. But in practice, labor leaders, taking advantage of the exemption from antitrust laws, are forcing countless thousands to pay dues against their will.

Consider the case of the Pleasant Farms Dairy, a small New Jersey concern employing only 93 people who were satisfied with their independent local union and the company's bonus-plan. When Teamsters Local 680 tried to become their bargaining agent, only three signed up. Local 680 thereupon decided to show those 90.

One of the dairy's wholesale-milk customers was the Bendix plant in Red Bank. According to testimony of the dairy's president at Congressional hearings, Bendix was notified that if it bought any more milk from Pleasant Farms Dairy, Local 680 would cut off its supply of steel and copper. Pleasant Farms stopped delivering to Bendix. Picket lines prevented them from delivering to 150 of their other buyers. American Can, to whom Pleasant Farms usually sent trucks to pick up paper milk cartons, was notified to desist; if American Can delivered any more cartons to Pleasant Farms, it was testified, Local 680 would throw a picket line around American Can, which its 8000 unionized employes would not cross.

The Teamsters Union, working

with other unions who will play ball, is building a coast-to-coast monopoly. It would seem that when it starts to unionize a shop, the union's agents seldom waste time talking to the workers. Instead, Benjamin Werne, speaking for the United Fresh Fruit and Vegetable Assn., told Congressmen, they "throw a contract at the company—'Sign here, or else!' If the boss mentions an employes' election, he is told, 'We don't go for elections. You either sign up, or we throw a picket line!' " Appeals to the Labor Board? Its procedures are so circuitous, Mr. Werne declares, that before a decision is made "a truckload of tomatoes becomes catsup."

In the Chicago area the Teamsters called a strike on a nationally-known dairy products company, which was told among other things that it must not hire drivers in any of its plants throughout the country who were not in this union. A huge cold-storage firm was warned that the dairy company's products would not be handled for storage. When the storage company reminded the union delegate that his union had signed a no-strike contract, the delegate laughed. "We've been sued by better people than you," he said.

Employes of the Danish Maid Bakery, a small concern in the Los Angeles district, voted 3½ to 1 against joining the AFL Bakery Union. The Teamsters Union then took a hand. It picketed the back entrances of the Danish Maid's best customers, the supermarkets. Threatened by labor with no more deliveries of meats, milk and canned goods, 12 supermarkets canceled orders for Danish Maid products.

Before a Congressional committee, an executive of the bakery said that this method of forcing the employer to sign up, whether his workers want to pay union dues or not, is called "organizing at the top." The most efficient "organizer at the top," Congress learned, is the Teamsters Union, which helps out now one union and then another. It can "halt transportation" and "starve out the employer." It also controls warehouses. In alliance with the Teamsters, a union can force almost any employer to bow, riding roughshod over his workers and the public.

Tough unions have no fear of laws, as now interpreted. In a Montana case the Labor Relations Board, advising an employer to settle, explained as follows: "After all, even if the union is found guilty of these unfair labor practices, all that will happen is that the Board will require the union to post a Cease and Desist order in the union hall, and the boys will only laugh at it."

The Remedy. If Congress really wants to protect our buying public, and the 75 percent of wage earners who prefer to stay out of unions, it need only restore to the soft gums of the Sherman Antitrust Act those sharp teeth which the Supreme Court pulled in its Hutcheson decision. In one simple paragraph it could reaffirm clearly its intent to apply the anti-monopoly laws again

to unions, as they always have applied to business.

We should be proud that our best American unions have set a high wage standard, which lets labor buy more of the good things it makes. Our best unions exist on their merits, and have no need of monopoly powers, or antitrust exemption. Their members trust and support them in free elections.

If the exemption were canceled out, no cynical labor-leader, by putting pressure on an employer, could force working people to pay union dues against their will. Neither could they join in covert conspiracies with employers to raise prices, limit competition or production, and bankrupt those who got in their way.

The Department of Justice would then be free again to fight for the public interest by breaking up all conspiracies in restraint of trade. The offenders—whether Big Business, Big Labor or an unholy alliance of the two—would once more be equal before the law.