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Union Security Under Federal Statutes

Part II

*by George Maxwell**

THE INTRODUCTION to this subject, in an article which appeared in the Cleveland Marshall Law Review, Volume I, No. 1, beginning on page 65, discussed some of the terminology of Union Security as it relates to the question of compulsory membership in a union. As the title to that article indicated, that sort of union security is but a small portion of the field of union protection under Federal Statutes. It is proposed here to discuss further the protection given to unions by Federal Statutes. Such protection may be accorded by the Anti-trust Acts and the Anti-injunction Act. The Labor-Management Relations Act and its amended predecessor the Labor Relations Act and the security they provide unions will be discussed in a later article. Important as is the language of these acts, it is also necessary to follow the interpretation of that language by the Federal Courts.

I.

First let us consider the protection against actions under the Anti-trust Acts.

The Sherman Anti-trust Act, enacted in July of 1890, holds forth as its purpose "to protect trade and commerce against unlawful restraints and monopolies." This Act declares that every "contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal . . ." [1] Certain provisos to the above Act permit a manufacturer to control the resale price of his own goods subject to the condition that there are other like goods for sale in competition therewith. Section 8 of the Act states, "The word 'person,' or 'persons,' wherever used in this Act shall be deemed to include corporations and associations existing under or authorized by

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[1] 26 Stat. 209 (1890), 15 U. S. C. §1 (1946).

the laws of either the United States, the laws of any of the territories, the laws of any State, or the laws of any foreign country." [2]

This section left undetermined whether labor unions, which might be classed as associations, could enter into agreements, or conspiracies, to protect the sale price of the services of their members. The matter was not long in coming to issue and decision. In the case of *U. S. v. Workingmen's Amalgamated Council of New Orleans*[3] it was held that the Act did apply to the activities of labor unions and that the strike, whose purpose was to force a closed shop on all businesses in New Orleans, was an interference with interstate and foreign commerce and was therefore a violation of the Act. A case of more widespread effect was that of *Loewe v. Lawlor.*[4] In this case the complainant, a hat-maker (Loewe), sued the United Hatters of North America, alleging that the union had violated the Act in bringing about a strike and a nationwide boycott of secondary nature. The union had solicited the assistance of the American Federation of Labor in enforcing the secondary boycott to cause the customers of the employer to cease doing business with him. In this case the Supreme Court stated that the prohibitions of the Act ran to all activities which interfered with the free flow of commerce.

These two decisions considerably hampered unions in their efforts to bring about the closed shop, the only type of "union shop" known at that time.

In 1914, allegedly to alleviate the restraint which the Sherman Anti-Trust Act had placed upon labor's efforts to protect its wages, the Clayton Anti-Trust Act was enacted. The portion of the Act which concerns the problem under consideration is that numbered Section 6 which says (*inter alia*):

> "That the labor of a human being is not a commodity or article of commerce. Nothing contained in the anti-trust laws shall be construed to forbid the existence and operations of labor, agricultural, or horticultural organization, . . . 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 anti-trust laws." [5]

[2] *Ibid.*

[3] 54 Fed. 994 (5th Cir. 1893).

[4] 208 U. S. 274 (1908).

[5] 38 Stat. 730 (1914), 29 U. S. C. § 52 (1946).

Further, in Section 20, the Act provides:

> "that no restraining order or injunctions shall be granted by any court of the United States, or a judge or judges thereof, in any case between an employer and employees, or between employers and employees . . . involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, . . ."
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> ". . . and no such restraining order or injunction shall prohibit any person or persons, . . . from ceasing to perform any work or labor, or from recommending, advising or persuading others by peaceful means so to do . . . or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising or persuading others by peaceful and lawful means so to do; . . . or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States." [6]

In the case of *Duplex Printing Co. v. Deering*[7] the Act was first fully tested in this respect. In this case the company did not employ union members. Certain unions, not representing any of Duplex's employees, brought about a situation in which employees of other companies refused to handle or install the presses manufactured by Duplex. Indeed, the unions went so far as to threaten customers of Duplex with strike action. In sum, the unions created a secondary boycott. The Duplex Company sued the union alleging a conspiracy in restraint of trade under the definitions of the Clayton Act. The union cited Section 20 of the Act in its defense. The Supreme Court decided against the union. The issue, as defined by the Court, was whether Section 20 protected the type of activities in which the union had engaged. The decision was based on the ground that while the Act protected strikes, picketing and boycotts, it did so only when such conduct was between "an employer and employees, or between employers and employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment . . ." Because the issue here did not involve an employer-employee dispute, the court held against the unions and granted the Duplex Company an injunction.

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[6] *Ibid.*

[7] 254 U. S. 443 (1921).

This case provided a basis for the conclusion that the protection of the Clayton Act did not run to a union which engaged in a secondary boycott resulting in an obstruction to interstate commerce and the free flow thereof.

The question still remained whether a strike of any sort was a violation of the Act. The Supreme Court in the two so-called *Coronado Cases*[8] and in *United Leather Workers v. Herkert & Meisel Trunk Co.*[9] carried the interpretation of the Act a step farther. These cases should be noted in chronological order of their decision. In the first hearing of *United Mine Workers of America v. Coronado Coal Co.*,[10] the owner of the coal company sought damages from the union on the ground that the strike from which he was suffering was part of a conspiracy to eliminate non-union mines from the production of coal, and by this means to insure the maintenance of the wage scales of union members. In ruling against the employer the Supreme Court found a lack of proof of a national conspiracy and found further that the coal mined at this one property was not sufficient to influence the price of coal nor to affect competition in its sale. The case was then remanded.

In *United Leather Workers v. Herkert & Meisel Trunk Co.*, the union, in an effort to secure a closed shop with a number of employers, engaged in a strike which involved both violence and illegal picketing. The result was that the employers were unable to fulfill their commitments to out-of-state customers. The employers sought an injunction against the union alleging interference with interstate commerce. In its decision the Supreme Court found that there was no violation of the Act unless there was a direct intent on the part of the union to restrain interstate commerce and to control prices and reduce competition. The basis of the court's decision was that the result of the strike was only incidentally to reduce or obstruct interstate commerce. On the second hearing of the *Coronado Case*[11] the Supreme Court was apparently convinced by the employers that it was the purpose of the union so to restrain interstate commerce as to affect the price of coal and that the production involved in this case was sufficient to affect competition and price in inter-

[8] 259 U. S. 344 (1922), *on rehearing*, 268 U. S. 295 (1925).
[9] 265 U. S. 457 (1924).
[10] 259 U. S. 344 (1922).
[11] 268 U. S. 295 (1925).

state commerce in coal. Therefore, the Court held that the strike and the destruction of the mines was in violation of the Act.

From the foregoing cases, we may conclude that, up to this point, it was the position of the Federal Courts that a nationwide, secondary boycott did violate the anti-trust statutes. A second principle may be stated: That while a strike is not in and of itself a violation of the statutes, a strike is a violation where the intent is to prevent the competition of non-union goods with union produced goods in interstate commerce.[12]

A further development in this trend of opinion is the decision in *United States v. Brims.*[13] In this case, the union (a carpenters' local), the lumber mills and building contractors of Chicago had entered into an agreement not to use lumber or millwork which had been produced by non-union labor. The Supreme Court found that the agreement was a violation of the anti-trust acts because it acted to restrain interstate commerce in non-union produced materials.[14] But, the holdings thus far were to be greatly changed after the passage of the Federal Anti-injunction Act in 1932.[15] The turning point may be said to have been marked by the decision in *Apex Hosiery Co. v. Leader.*[16] In this instance there was a sit-down strike, destruction of the company's property and prevention of the shipment of a large stock of manufactured goods. The Company sued for damages under the anti-trust acts. Mr. Justice Stone, in his opinion, stated of the Sherman Act that "The end sought was the prevention of restraints to free competition in business and commercial transactions which tended to restrict production, raise prices or otherwise control the market to the detriment of

[12] There is another interesting decision involving the employer-employee relationship, namely, Anderson v. Shipowners' Association of Pacific Coast, 272 U. S. 359 (1926). This suit was brought by a merchant seaman seeking to enjoin the employers' association from maintaining exclusive control of the hiring of merchant seamen out of Pacific Coast ports. The Court held that the control of all employment and the conditions of employment by the Association was a combination in restraint of trade because the result of their actions was to limit their own freedom in the carrying on of interstate and foreign commerce. Each employer, it seems, in the opinion of the court should be free to do his own hiring and establish his own conditions of employment and the wages to be paid.

[13] 272 U. S. 549 (1926).

[14] This principle was re-affirmed in Local 167 v. United States, 291 U. S. 293 (1934).

[15] 47 Stat. 70 (1932), 29 U. S. C. § 101 (1946), commonly known as the Norris-La Guardia Act.

[16] 310 U. S. 469 (1940).

purchasers or consumers of goods and services . . ." Thus, use of violence and physical interference with the manufacture and production of goods for interstate commerce was no longer to be considered a violation of the anti-trust acts although they might be offenses against other statutes so long as the strike did not contravene the purposes set forth in the quotation given above.

II.

The passage of the Norris-LaGuardia Act in 1932, it is said, was the result of the practice of granting injunctions in Federal Courts which made the extension of union organization nearly impossible. Upon a cursory reading, this Act will seem to be only an extension of Section 20 of the Clayton Act. However, there are two chief distinctions to be noted. In the first place the definition of a labor dispute in the new Act includes conduct in which the disputants need not stand to each other in the relation of employer and employee. The second important difference is that whereas the Clayton Act had said that none of the activities listed in Section 20 was to be considered a violation of any law of the United States, the Norris-LaGuardia Act contains no such language and purports only to limit the granting of injunctions by Federal Court.

The first and leading case under the Norris-LaGuardia Act is *United States v. Hutcheson.*[17] This case arose out of a dispute between the United Brotherhood of Carpenters and Joiners and the International Association of Machinists. The employer in the case had awarded some construction work to the latter union which the Carpenters claimed was theirs by right of jurisdiction. Members of both unions were employed by the company. The Carpenters called a strike and circulated a bulletin, nationally, to their members urging them to refrain from buying the product of the struck employer. The United States brought an action against the Carpenters alleging that the action of the union was an unlawful restraint of trade. The Supreme Court dismissed the action. The majority opinion dismissing the case was delivered by Justice Felix Frankfurter. In his opinion it appears that the majority of the court concluded that the Norris-LaGuardia Act was in effect an amendment of the Sherman and

[17] 312 U. S. 219 (1941).

Clayton Anti-Trust Acts and that it made immune from prosecution thereunder all strikes, picketing, boycotts and other concerted union activities whose purposes were the protection of the interest of the strikers, where such activities stemmed from a labor dispute as defined in the Norris-LaGuardia Act. The opinion goes so far as to state that "so long as a union acts in its self-interest and does not combine with non-labor groups, the licit and the illicit under Section 20 are not to be distinguished by any judgment regarding the wisdom or unwisdom, the rightness or wrongness, the selfishness or unselfishness of the end of which particular union activities are the means.[18] Thus, so long as the activities of the union are not in concert with employer groups, and are confined to protection of union interests, the union is secure from prosecution under the anti-trust acts. This general position was reaffirmed in the case of *Allen Bradley Co. v. Local Union No. 3, I. B. E. W.*[19] Here the union had entered into a contract with a group of employers in New York City to exclude the use of materials not made in the city. The Supreme Court found this to be a violation of the anti-trust acts. But, very significantly, in modifying the injunction granted by the district court, the Supreme Court said that the restraining order must be modified "to enjoin only those prohibited activities in which the union engaged in combination 'with any person, firm or corporation which is a non-labor group.' " In its remand the Court stated that the order restraining the union must be so framed as to permit the union to refuse to work on goods not manufactured in the city; even though prohibited from doing so by agreement with an employer.

A further insulation of unions against prosecution for violation of the anti-trust acts is found in the case of *United Brotherhood of Carpenters and Joiners of America v. United States.*[20] This case is sometimes referred to as the *Lumber Products Case.* Here the combination of unions and employers was similar to that in the *Allen Bradley* case, and the Supreme Court found the parties in violation of the anti-trust acts. Of chief interest, however, are the findings of the court that (1) the contract was a violation of the anti-trust acts, (2) the provisions of the Norris-LaGuardia Act are applicable, (3) the union is relieved of lia-

[18] Id. at p. 232.
[19] 325 U. S. 797 (1945).
[20] 313 U. S. 539 (1947).

bility in cases of a labor dispute, and (4) the trial court erred in charging that the agents of the union in negotiating the contract, involved the local and national unions of which they were the agents, merely because the agents had acted within the scope of their authority. The Supreme Court held that as a prerequisite to finding the local and national unions guilty, it would be necessary to find that they had either directly participated in the negotiations, or had authorized or ratified the acts of their agents.

The Supreme Court went still further in its extension of protection to unions under Federal Statutes in *Hunt v. Crumboch.*[21] In this case the union refused to permit its members to work for the employer and, further, attempted to persuade customers of the employer to cease doing business with him. The end result of the process was to force the employer out of business. The employer brought suit for violation of the anti-trust acts. In its decision the Supreme Court said: "It is not a violation of the Sherman Act for laborers in combination to refuse to work. They can sell or not sell their labors as they please, and upon such terms and conditions as they choose, without infringing the anti-trust laws . . . A worker is privileged under congressional enactments, acting either alone or in concert with his fellow workers, to associate or to decline to associate with other workers, to accept, refuse to accept, or to terminate a relation of employment, and his labor is not to be treated as a 'commodity or article of Commerce.'" In this case, the effect of the decision was to uphold the union's actions even to the extent of forcing the employer out of business.

CONCLUSION.

In summary it may be said that protection against prosecution under the anti-trust acts is extended to a union whenever (1) the union acts in protection of its own interests; (2) acts without combination with employers; (3) does not authorize the illegal acts of its agents officially and (4) is engaged in a labor dispute as defined by the Norris-LaGuardia Act. Whenever these circumstances exist the union is secure against a finding that it is in violation of the anti-trust acts.[22]

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[21] 325 U. S. 821 (1945) Hunt.

[22] Further discussion of the immunities and security of unions under the Federal Statutes not considered herein will follow.