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APPLICATION OF THE SHERMAN ANTI-TRUST ACT TO UNIONS SINCE THE APEX CASE

THE ACT AND ITS APPLICATION TO UNIONS

WITH a view to protecting free competition and to preserving the American system of free enterprise Congress passed the Sherman Anti-Trust Act in 1890.¹ Section 1 provided that "every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states . . . is hereby declared to be illegal."² This language is broad enough to apply to combinations of working men and to many of the activities of such combinations. Its literal application would condemn all the concerted activities of striking, picketing and primary and secondary boycott where interstate commerce is restrained. There was good reason to believe that the congressional intent was not to subject labor unions to the broadest application that the language would bear, and vigorous controversy soon arose as to whether the Act was intended to apply to labor at all.³ It was argued on the one hand that Congress, if it had intended to make an exception of labor unions, would have done so expressly. On the other hand, it was contended that this was a law to prescribe the rules governing barter and sale, not to govern the personal relations of employers and employees; a law to regulate trade, not labor.

The courts, however, accepted the argument for applicability. As early as 1893 a federal court held that the Sherman Act was intended to apply to labor unions.⁴ In 1908 the United States Su-

¹ 26 STAT. 209-210, 15 U. S. C. §§ 1-7 (1940).

² Violations are restrained or redressed by injunction, criminal prosecution and (since the Clayton Act) civil action for treble damages 26 STAT. 209 (1890), 15 U. S. C. §§ 1-4 (1940), 38 STAT. 730 (1914), 15 U. S. C. § 15 (1940).

³ 51 CONG. REC. 13661-13668 (1890).

⁴ *United States v. Workingmen's Amalgamated Council*, 54 Fed. 994 (C. C. E. D. La. 1893).

preme Court accepted this view in the famous *Danbury Hatters'* case,⁵ where a union was held liable in treble damages for a peaceful interstate boycott. In this case the Court adopted a much broader view of the extent of the application of the Act to labor activity than has been adhered to in later decisions. Because the boycott was a direct and intended interference with interstate transactions, it was considered by the Court to violate the Sherman Act, and the lawfulness of the end sought by the union (employment of union members) was regarded as unimportant.

Subsequent decisions, it will be seen, have restricted and narrowed the categories of forbidden labor activities, and have based distinctions on the ultimate purposes of such activities, but they have never departed from the primary proposition that labor unions are subject, in some measure, to the prohibitions of the anti-trust law.

LEGALIZATION OF PEACEFUL LABOR ACTIVITY BY EXPRESS STATUTORY PERMISSION

Congress apparently did not approve the broad application of the Sherman Act to labor, and the Clayton Act,⁶ passed in 1914, contained provisions⁷ designed to withdraw the peaceful activities of

⁵ *Loewe v. Lawlor*, 208 U. S. 274 (1908), *further proceedings*, 235 U. S. 522 (1915).

⁶ 38 STAT. 741 (1914), 15 U. S. C. § 17 (1940), 38 STAT. 738 (1914), 29 U. S. C. § 52 (1940).

⁷ Section 6 of the Clayton Act states "... the labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor ... organizations ... or to forbid or restrain individual members of such organizations from *lawfully* carrying out the legitimate objects thereof ..." (Italics supplied). 38 STAT. 731 (1914), 15 U. S. C. § 17 (1940).

Section 20 provides that "no restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning the terms or conditions of employment" unless certain procedural requirements are met. Even after these requirements are met, the injunction or restraining order is not to prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or abstain from working; or from ceasing to patronize or to employ any party to such dispute, or

unions from the scope of the anti-trust laws. In the Clayton Act Congress seems to state in effect that the anti-trust laws shall not be construed to forbid the normal functioning of labor unions to lawfully carry out their legitimate objects. The sponsors of these provisions were disappointed⁸ by the decision in *Duplex Printing Press Co. v. Deering*.⁹ In effect the Supreme Court held that the "lawful" conduct which the Clayton Act permits was limited to that which was permissible without it.¹⁰ Consequently the ban on labor union activity obstructing interstate commerce continued to be enforced. Numerous federal decisions¹¹ sustained injunctions, criminal prosecutions and actions for treble damages for activities which had their origin and purpose in the ordinary objectives of a union in a labor dispute.

To remedy this situation was a specific purpose of the Norris-LaGuardia Act,¹² passed in 1932. This legislation in express terms exempted from injunction the peaceful activities of striking, picketing and primary and secondary boycott where carried on in a "labor dispute" which was broadly defined. That the purpose of legalizing the peaceful pursuit of labor objectives has been

from recommending, advising, or persuading others by peaceful and lawful means so to do . . . nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States." 38 STAT. 738 (1914). 29 U. S. C. § 52 (1940).

⁸ President Wilson saw in the Act a "veritable emancipation of the working men of America." Samuel Gompers viewed Section 6 as the "industrial Magna Charta upon which the working people will rear their construction of industrial freedom." Quoted in FRANKFURTER AND GREEN, *THE LABOR INJUNCTION* 143 (1930).

⁹ 254 U. S. 443 (1921).

¹⁰ Discussing Section 6, of the Clayton Act the Court said: ". . . there is nothing in the section to exempt such an organization or its members from accountability where it or they depart from its normal and legitimate objects and engage in an actual combination or conspiracy in restraint of trade. And by no fair or permissible construction can it be taken as authorizing any activity otherwise unlawful, or enabling a normally lawful organization to become a cloak for an illegal combination or conspiracy in restraint of trade as defined by the antitrust laws." *Id.* at 469.

¹¹ *Bedford Cut Stone Co. v. Journeymen Stone Cutters' Assn.*, 274 U. S. 37 (1927); *United Mine Workers of America v. Coronado Coal Co.*, 259 U. S. 344 (1922), *later proceedings*, 268 U. S. 205 (1925); *Aeolian Co. v. Fisher*, 40 F. (2d) 189 (C. C. A. 2d 1930); *Rockwood Corporation v. Bricklayers' Local Union No. 1*, 33 F. (2d) 25 (C. C. A. 8th, 1929).

¹² 47 STAT. 70 (1932), 29 U. S. C. § 101 (1940).

achieved is illustrated in the case of *United States v. Hutcheson*.¹³ Criminal prosecution for violation of the Sherman Act was instituted against the defendant A. F. of L. union which was involved in a jurisdictional dispute with another A. F. of L. union. The complaining corporation employed members of each union in different kinds of work. Defendant union struck and picketed to compell plaintiff to employ its members to do certain types of work instead of members of the rival union. The union also picketed a tenant occupying a portion of the corporation's land and struck against contractors doing work for the corporation. Moreover, circulars were sent to persons in various states urging them not to purchase the corporation's products. This latter activity contained aspects of primary and secondary boycott. Judgment sustaining demurrers to the indictment was affirmed by the Supreme Court. Justice Frankfurter, in delivering the opinion of the Court stated the effect of the Norris-LaGuardia Act in the following words:

"... whether trade union conduct constitutes a violation of the Sherman Law is to be determined only by reading the Sherman Law and section 20 of the Clayton Act and the Norris-LaGuardia Act as a harmonizing text of outlawry of labor conduct.

"... if the facts laid in the indictment come within the conduct enumerated in section 20 of the Clayton Act they do not constitute a crime within the general terms of the Sherman Law because of the explicit command of that section that such conduct shall not be 'considered or held to be violations of any law of the United States'. 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 the particular union activities are the means..."

After rejecting any distinction based on the internecine nature of the controversy, the Court defined the effect of the above-mentioned legislation upon the union's criminal liability as follows:

"... to argue, as it was urged before us, that the *Duplex* case still gov-

¹³ 312 U. S. 219 (1941).

crns for the purposes of a criminal prosecution is to say that which on the equity side of the court is allowable conduct may in a criminal proceeding become the road to prison. It would be strange indeed that although neither the government nor . . . the corporation could have sought an injunction against the acts here challenged, the elaborate efforts to permit such conduct failed to prevent criminal liability punishable with imprisonment and heavy fines. . . .

"The underlying aim of the Norris-LaGuardia Act was to restore the broad purpose which Congress thought it had formulated in the Clayton Act but which was frustrated, so Congress believed, by unduly restrictive judicial construction. . . . The Norris-LaGuardia Act reasserted the original purpose of the Clayton Act by infusing into it the immunized trade union activities as redefined by the later Act."¹⁴

It is now settled that peaceful strike, primary and secondary picketing, or primary and secondary boycott, in a "labor dispute" is no cause for action under anti-trust law even though a direct and intentional obstruction to interstate commerce has resulted.¹⁵

JUDICIAL LIMITATION OF ANTI-TRUST LAW APPLICATION TO CONDUCT OUTSIDE THE SCOPE OF PERMISSIVE STATUTES— THE APEX CASE.

The *Hutcheson* case was concerned with peaceful and lawful conduct which the Clayton and Norris LaGuardia Acts exempt from the operation of the anti-trust law when such conduct involves or grows out of a labor dispute.

In the case of *Apex Hosiery Co. v. Leader*,¹⁶ the Supreme Court was confronted with a labor dispute in which violence and trespass occurred and obstructed interstate commerce. A sit down strike, accompanied by force and injury to property, was called and maintained for seven weeks in the plant of the Apex Hosiery Company, one of the largest manufacturers of hosiery in the United States. The plant, located in Philadelphia, had a monthly production of about one hundred thousand dozen pairs of hose, 85

¹⁴ 312 U. S. 219, 231-236 (1941).

¹⁵ See Articles cited *infra*, note 21.

¹⁶ 310 U. S. 469 (1940). This famous case was decided on the fiftieth anniversary of the passage of the Sherman Act.

per cent of which were regularly shipped outside Pennsylvania. In the course of the seven violent weeks, bricks were thrown through windows, furniture destroyed and there were inventory shortages; the largest item of damage was attributed to the malicious destruction of machinery. The trial court also found that the union refused to allow the company to remove from the plant 130,000 dozen pairs of hose packed and ready for shipment in fulfillment of orders largely from other states.

A review of the existing cases could not have failed to give the Apex Company substantial reasons to hope for success when it began its suit. Though the *Hutcheson* decision came later, any anticipation of the position the court took there would not detract from the apparent strength of the employer's case here where gross violations of state law could have been expected to put the actions of the union outside the terms of the exempting laws. These laws exempted only peaceful activities. The clear question was presented whether the Sherman Anti-trust Act would apply to violent and direct interference with production and interstate shipment, conduct which was not protected by the Clayton and Norris LaGuardia Acts, when the conduct was carried on to obtain a closed shop. Previous decisions¹⁷ afforded some reason to believe that it would so apply. Furthermore, in *NLRB v. Jones & Laughlin Steel Co.*,¹⁸ the Supreme Court had recently expanded the concept of interstate commerce to include production for that commerce.

In the *Apex* decision, the Court, speaking through Mr. Justice Stone, affirmed the proposition that the production of a plant such as this was interstate commerce within the constitutional power of Congress to regulate, but denied that Congress had exercised its power upon the activities here. The product market, as contrasted to the labor market is a market in which the Sherman Act operates to preserve free competition. The Act was designed to

¹⁷ *U. M. W. v. Coronado Coal Co.*, 268 U. S. 295 (1925); *Loewe v. Lawlor*, cited at note 5 *supra*; cases cited at note 11 *supra*.

¹⁸ 301 U. S. 1 (1937).

prevent restraints “. . . which tended to restrict production, raise prices, or otherwise control the market to the detriment of purchasers or consumers of goods and services.”¹⁹ It “was not enacted to police interstate transportation, or to afford a remedy for wrongs which are actionable under state law and result from combinations or conspiracies which fall short, both in their purpose and effect, of any form of market control of a commodity . . . ”²⁰ This decision so limits the operation of the Anti-trust Act upon labor union activity that the result seems to be a complete liberation of unions from the prohibitions of the Act so long as the ultimate goals pursued are the normal aims of labor. Certainly the decision affords a basis for speculation as to what, if any, labor union activities and practices are left subject to the Sherman Act.

The opinion in the *Apex* case definitely affirmed the conclusions of early cases to the effect that there are certain objectives which cannot be sought by a union without violating the anti-trust laws. The *Apex* decision did not purport to overrule those cases, but distinguished them on the ground that there was in each of them some form of restraint on commercial competition in the marketing of goods and services. The validity of this distinction has been questioned, and certainly the comments in the legal journals and in subsequent decisions seem agreed that the *Apex* case did not preserve the status quo.²¹ On the contrary, the designation of this decision as *A New Federal Charter For Trade Unionism*²² sug-

¹⁹ 310 U. S. 469, 495 (1940).

²⁰ *Id.* at 512.

²¹ Schmidt, *The Application of the Antitrust Laws to Labor: A New Era*, 19 TEX. L. REV. 256 (1941); Tunks, *A New Charter for Trade Unionism*; 41 COL. L. REV. 969 (1941); Larson, *May Peaceful Picketing Be Enjoined?* 22 TEX. L. REV. 392 (1944); Cavers, *And What of the Apex Case Now?* 8 U. OF CHI. L. REV. 516 (1941); Cavers, *Labor v. The Sherman Act*, 8 U. OF CHI. L. REV. 246 (1941); Gregory, *The Sherman Act v. Labor*, 8 U. OF CHI. L. REV. 222 (1941); McLaughlin, *Bottlenecks (Union Made Included)* 8 U. OF CHI. L. REV. 215 (1941); Steffen, *Labor Activities in Restraint of Trade: The Apex Case*, 50 YALE L. J. 787 (1941); Note, 45 COL. L. REV. 272 (1945); comment, 54 YALE L. J. 853 (1945); note 59 HARV. L. REV. 295 (1945); cases cited at notes 24-44 *infra*.

²² Tunks, *supra* note 21.

gests the typical law review appraisal of its effect,²³ and the cases hereinafter considered reveal that the federal courts have thought it a landmark case in the field of anti-trust law as applied to labor unions.

Two Supreme Court decisions in recent years have further delineated the application of the Sherman Act to labor unions and their activities. These two decisions are *Hunt v. Crumboch*²⁴ and *Allen Bradley Co. v. Int. Brotherhood of Electrical Workers*.²⁵

The *Hunt* case is an instance of deliberate destruction of an interstate business by a union actuated by malicious motives. A member of defendant union had been murdered in the course of a violent labor dispute. A member of plaintiff interstate trucking partnership was believed by the union to be guilty of the crime, though he had been tried for it and acquitted. The union refused to allow its members to work for the Hunt partnership or to allow Hunt employees to join the union. Through the use of its closed shop agreements with plaintiff's customers, it forced the firm out of business. In a suit for injunction under the Sherman Act the lower courts held for the union on the authority of the *Apex* case because the restraint of trade did not affect prices or price competition.²⁶ The Supreme Court affirmed on the ground that Congress in the Sherman Act and subsequent legislation had manifested an intent that refusal to accept personal employment should not be considered a violation of anti-trust laws so long as the refusal

²³ While many scholars agreed with the principle and policy of the decision, others disagreed. An example of rather pointed criticism is that of Professor McLaughlin who states: "In order to apply the National Labor Relations Act to the extent demanded by labor, the Court, under strong pressure from the 'Court-packing plan,' in 1937, overthrew substantially all established limitations on the concept of what directly and substantially affects interstate commerce so as to come within the commerce clause of the constitution. The *Apex* case, in 1940, presented the question whether the New Deal majority would take the bitter with the sweet and recognize the extension of the interstate commerce power to reach the excesses of labor. As was then to be anticipated, however, the majority found an opening in minor variations in the language between the Sherman Act and the Labor Act, and decided that Congress did not try to use all its power in the Sherman Act." McLaughlin, *supra* note 21, at 220.

²⁴ 325 U. S. 821 (1945).

²⁵ 325 U. S. 797 (1945); *Later Proceedings* 164 F. (2d) 71.

²⁶ 143 F. (2d) 902, 903 (C. C. A. 3d 1944), 47 F. Supp. 571, 573 (E. D. Pa. 1942).

was in union self-interest. It was immaterial that the motives of the union were not commendable. The Court made the following comment:

"... if a group of petitioner's business competitors had conspired to suppress petitioner's business by refusing to deal with it, such a combination would have violated the Sherman Act, and a labor union which aided and abetted such a group would have been equally guilty."²⁷

In the *Allen-Bradley case*, the defendant, a local union of the International Brotherhood of Electrical Workers, incorporated in wage-hour and closed shop agreements its promise that union members would not work on goods other than those produced by *local* unionized manufacturers. The Union, in cooperation with local manufacturers and contractors, used primary and secondary boycott and other peaceful labor pressures to achieve for these three interests such a monopoly of business in the New York City area that goods and services from without the area were effectually excluded. Competition was extinguished, and prices rose sharply. Plaintiff's products, coming from plants located outside the New York City area, were excluded regardless of whether or not plaintiffs had harmonious relations and agreements with locals of the same national organization.²⁸ The activities were held violations of the Sherman Act although carried on to further union interests. Whether particular activities violate the Act may depend on whether the union acts alone or in combination with a business group. Business monopolies are outlawed, and a business monopoly is no less such because a labor union participates.

Another aspect of the Supreme Court doctrine is seen in *Columbia River Packers' Assn. v. Hinton*.²⁹ A C.I.O. union consisting of

²⁷ 325 U. S. 821, 824 (1945).

²⁸ "The boycott... is virtually complete against manufacturers, such as plaintiffs, who have no working agreements with local 3. It makes no difference that most of the plaintiffs are located without the jurisdiction of local 3 and hence could never bargain collectively with it in any event, or that some of the plaintiffs are already working under harmonious agreements with other unions." 325 U. S. 797, 819 (1945).

²⁹ 315 U. S. 143 (1942). *Accord*: *Hawaiian Tuna Packers, Ltd. v. Int. Longshoremen's Union*, 72 F. Supp. 562 (D. C. Hawaii 1947).

fishermen who were independent operators and who, in some instances, were themselves employers declared a boycott against plaintiff packers to compel agreement to buy fish from C.I.O. fishermen only. In granting injunction against the union the Supreme Court, speaking through Justice Black, said:

"We think the court below was in error in holding this controversy a 'labor dispute' within the meaning of the Norris-LaGuardia Act. That a dispute among businessmen over the terms of a contract for the sale of fish is something different from a 'controversy concerning the terms and conditions of employment, or concerning the association . . . of persons . . . seeking to arrange terms or conditions of employment' calls for no extended discussion."³⁰

Thus, the Court held that a union may so depart from its normal objectives and activities and enter the field of business in pricing and selling commodities that it becomes subject to the Sherman Act.

A tentative generalization may be stated on the basis of the *Apex*, *Hutcheson*, and *Hinton* cases. If a union combines with an employer group with the purpose of achieving a monopolistic advantage for the latter, the combination falls within the ban of the Sherman Act even though the union has the purpose of gaining for its membership security of employment and improvement of wages and conditions (*Allen Bradley* case). If the union does not combine with an employer group, it is more difficult to find a violation of the Sherman Act if the union is promoting a purely union purpose (*Hunt* case). But if the union has assumed the character of a business enterprise, it is subject to the Act (*Hinton* case).

Cases in the lower federal courts appear consistent with this generalization.

*United States v. Lumber Institute of Allegheny County*³¹ held that when an association composed of representatives of millwork manufacturers, building contractors, and a carpenters' union ob-

³⁰ *Id.* at 145.

³¹ 35 F. Supp. 191 (W. D. Pa. 1940).

tains the use of union pressures to exclude out-of-state millwork, such association is guilty of violation and liable to the criminal penalties of the anti-trust laws.

Criminal liability is incurred by both the union³² and the association of employers³³ when they combine to fix and maintain prices of electrical equipment by means of union agreement, in exchange for closed shop contracts, that union members will refuse to work on any such equipment that has been manufactured in other states.

Authors of a theatrical production who work as independent businessmen and market their finished product violate the anti-trust law by entering into an agreement with the guild of which they are members for price fixing, compulsory arbitration and dealing with guild members only. The guild is also guilty of violation by entering into the agreement. In this situation the parties are not in and do not contemplate an employer-employee relationship.³⁴

Again *Philadelphia Record Co. v. Manufacturing Photo-Engravers Assn.*³⁵ held that proof of a combination of labor and business, instigated by business, to put an end to night commercial photo-engraving work would justify injunction at the suit of a party whose interstate commercial engraving business was thereby destroyed. Eliminating competition for the benefit of an employer was not a legitimate labor objective. Therefore, there was no labor dispute, and this combination, designed to restrain or control the supply entering and moving in interstate commerce or the price of a commodity in interstate markets, was a "combination or conspiracy in restraint of trade" within the scope of the Sherman Act. The above-mentioned cases and others³⁶ hold, like the

³² *United States v. Local Union No. 3, Int. Brotherhood of Elec. Workers*, 42 F. Supp. 783 (S. D. N. Y. 1941).

³³ *United States v. New York Elec. Contractors Assn.*, 42 F. Supp. 789 (S. D. N. Y. 1941).

³⁴ *Ring v. Spina*, 148 F. (2d) 647 (C. C. A. 2d 1945).

³⁵ 155 F. (2d) 799 (C. C. A. 3d 1946).

³⁶ *Lumber Products Assn. v. United States*, 144 F. 2d 546 (C. C. A. (9th) 1944); *Albrecht v. Kinsella*, 119 F. (2d) 1003 (C. C. A. 7th 1941); *United States v. Associ-*

Allen-Bradley and *Hinton* cases, that if a union combines with an employer and uses its labor weapons to exclude competitors from the market, or in order to effectuate a division of the market or the fixing of prices, or if it pursues these objectives in the character of a business institution, then the immunities of the permissive laws cannot be claimed and the anti-trust law is violated. The status of such activities, held anti-trust violations before³⁷ the *Apex* case, has not been altered by this case or by statute.

To be distinguished from these cases is *United States v. Bay Area Painters and Decorators Joint Committee*.³⁸ The court held the above rule not applicable to an agreement between employees and employers not to use spray painting equipment. Such an agreement was found to be within the union's rights in absence of specific intent to fix prices or suppress competition. Judicial notice was taken of a health hazard involved in spray painting. Reasonable demands as to conditions of employment, said the District Court, do not, because accepted by the employer, become a combination with a business interest in violation of the Act.

A point which was prominent in early cases but which has not lately been considered important was revived in obiter remarks of the federal district court in *United States v. Gold*.³⁹ A union was prosecuted under the anti-trust laws for enforcing an interstate boycott against a tanning plant. The court held for the union on the grounds that the ultimate purpose of the boycott was to secure jobs for union members and that market control was not attempted. But in addition to these grounds the court emphasized the fact that the quantity of goods produced in the boycotted plant was insufficient to affect prices in the national market. It may be

ated Plumbing and Heating Merchants, 38 F. Supp. 769 (W. D. Wash. 1941); *Loew's Incorporated v. Basson*, 46 F. Supp. 66, 72 (S. D. N. Y. 1942); *Truck Drivers' Local No. 421 v. United States*, 128 F. (2d) 227 (C. C. A. 8th 1942).

³⁷ *United States v. Brims*, 272 U. S. 549 (1926); *United States v. Int. Fur Workers Union*, 100 F. (2d) 541 (C. C. A. 2d 1938); *Scavenger Service Corporation v. Courtney*, 85 F. (2d) 825 (C. C. A. 7th 1936).

³⁸ 49 F. Supp. 733 (N. D. Cal. 1943).

³⁹ 115 F. (2d) 236 (C. C. A. 2d 1940).

safe to say that the dictum in the case which attaches importance to the question whether the volume of commerce restrained was so great that its withdrawal from the market would substantially affect prices is at variance with the trend of recent decisions. Generally these later decisions hold that restraint of commercial competition in interstate commerce violates the Sherman Act whether the business restrained is large or small. However, no labor activity is regarded as directly causing restraint of commercial competition unless market control is specifically intended as an end in itself or is intended as a means to some end other than an accepted goal of labor. When a labor aim is the objective, there is, of course, the intent on the part of the participants to raise their own prices (wages) and also the intent to thereby raise the market price of their product in the sense that everyone intends the natural consequences of his voluntary acts. But it is nowhere supposed that this sort of intent, or this effect on market conditions and prices, constitutes the direct or intended restraint on price competition which the Sherman Act forbids.

The following recent cases have held that no cause of action can be made out against the unions under the anti-trust laws where there has been no restraint of commercial competition; and that the anti-trust laws take no cognizance of violations of state law in methods used by a union, nor of the reasonableness or unreasonableness of the purpose so long as it is in union self interest.

*International Ladies' Garment Workers Union v. Donnelly Garment Co.*⁴⁰ held that fraud and violence in secondary boycott and mass picketing do not constitute a federal violation when the objective is to compel the management of a factory to require its employees to be members of the union. It was immaterial that the employer had secured signatures of all employees in the factory indicating their desire not to become members.

A directed verdict for the union on the opening statement of the employer's counsel was upheld in *Gundersheimer's Inc. v. Bakery*

⁴⁰ 119 F. (2d) 892 (C. C. A. 8th 1944).

& Confectionery Workers Int. Union.⁴¹ The opening statement indicated that a bakery plant in Washington, D. C., was closed because of a strike. The striking employees were demanding that the employer cease importing baked goods from Philadelphia and gave as their reason that wages were lower in Philadelphia than in Washington. The court saw in the plaintiff's statement no showing of anything more than a strike to secure more jobs at higher wages for union members. Though direct restraint of interstate trade was specifically sought as the means to the desired end, such conduct is permissible when the end itself is the attainment of a labor objective in a labor dispute.

That no violation occurs because the demands of the union are unreasonable or tend to create inefficiency or retard technological progress is illustrated in the cases of *United States v. Local 807 of Int. Brotherhood of Teamsters*,⁴² and *United States v. Carrozzo*.⁴³ The former case found no anti-trust violation in requiring operators of trucks in interstate commerce to hire union drivers within the city of New York, or in the alternative to pay to the union a sum equal to the union wage for a full days work. The latter case held it no violation to demand non-use of a labor saving device which would displace union members, or, in the alternative, employment of the same number of men as were needed without it. Several other cases⁴⁴ in addition to these just mentioned have held activities which were carried on entirely by and for labor interests immune from condemnation so far as the anti-trust laws are concerned.

The last word has not been said, by any means, as to the application of the Sherman Anti-Trust Law. Problems remain as to the types of agreements which may be made or sought by unions and

⁴¹ 119 F. (2d) 205 (App. D. C. 1941).

⁴² 118 F. (2d) 684 (C. C. A. 2d 1940). *Aff'd on another point*, 315 U. S. 521 (1942).

⁴³ 37 F. Supp. 191 (N. D. Ill. 1941).

⁴⁴ *United States v. San Francisco Elec. Contractors Assn.*, 57 F. Supp. 57 (N. D. Calif. 1944); *United States v. American Federation of Musicians*, 47 F. Supp. 304 (N. D. Ill. 1942), *aff'd*, 318 U. S. 741 (Mem. Op. 1943); *United States v. Central Supply Assn.*, 40 F. Supp. 964 (N. D. Ohio 1941).

which do not violate the anti-trust laws. Doubt may be expressed that a union always exempts itself from the Sherman Act if it acts alone and on its own initiative. One may well believe from the *Allen-Bradley* and *Hinton* cases, and despite the *Hunt* case, that unions may subject themselves to the Act even though they do not combine with non-labor groups and do not fully assume the character of a business institution.

O. L. Clark.