Fordham Law Review

Volume 10 | Issue 2 Article 7

1941

Jurisdictional Disputes and the Sherman Act- United States v. Hutcheson

JURISDICTIONAL DISPUTES AND THE SHERMAN ACT— UNITED STATES v. HUTCHESON

A recent decision of the United States Supreme Court brings to a solution, for the present at least, the long and bitter controversy that has raged over the question whether the Sherman Anti-Trust Law is to be applied to labor unions. In this case, *United States v. Hutcheson*,[1] the decision is that courts must maintain a hands-off policy in all cases of jurisdictional disputes between unions even though the methods employed by the disputants are restraining interstate commerce, if their acts are within those permitted by the Clayton Act. The facts of the *Hutcheson* case are simple. Four officers of a carpenter's union were indicted for conspiracy to restrain interstate commerce in violation of the Sherman Act.[2] The government alleged interference with interstate commerce in beer, during a jurisdictional strike at a brewery company arising out of a conflict over the right to dismantle machinery between a carpenter's union and a machinist's union, both of the same parent body, the American Federation of Labor. The acts complained of were: (1) picketing of a brewery and its tenants; (2) refusing to allow union members to be employed in construction work for the brewery company or its tenant; (3) printing of notices in a union publication urging a national boycott of the brewery company's beer.

The specific question raised by this case is whether peaceful activities by a union involved in a jurisdictional dispute with a rival union is a violation of the Sherman Anti-Trust Act. The Supreme Court by a five to two decision held that disputes between labor unions do not come within the Sherman Anti-Trust Act. The majority opinion held that the carpenter's union in refusing to work for the brewery company, in picketing, *etc.*, was plainly within its rights and took the view that jurisdictional disputes, being one of the potent forces in the modern development of industrial unions, fall within the definition of "labor disputes" in Section 20 of the Clayton Act,[3] and hence, acts in consequence of such disputes are immune under the Act.

The dissent held that the traditional approach[4] of the courts in the past

1. 61 Sup. Ct. 463 (1941).

2. "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. . . ." 26 STAT. 209, 15 U. S. C. A. § 1.

3. 38 STAT. 738, 29 U. S. C. A. § 52: "No restraining order or injunction shall be granted by any court of the United States, . . . in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of a dispute concerning terms or conditions or employment, unless necessary to prevent irreparable injury to property or to a property right, . . ." It further provides that no injunctions shall be issued to prohibit persons from picketing, boycotting, striking or from any other lawful act in the absence of such labor dispute, whether alone or in concert, acting as a union.

4. Loewe v. Lawler, 208 U. S. 274 (1908); Duplex Printing Press Co. v. Deering, 254 U. S. 443 (1921); Bedford Stove Co. v. Journeyman Stone Cutters Ass'n, 274 U. S. 37 (1927).

to the question of the application of the Anti-Trust laws to labor unions should be followed, asserting that the Court was attempting to legislate radically where Congress had refused to act, and stated that "by resurrecting a rejected construction of the Clayton Act," the majority was usurping the functions of Congress.[5]

Labor, since the enactment of the Sherman Act fifty years ago, has insisted that its attempt to better working conditions, even if an incidental restraint of interstate commerce results, should not be considered within the prohibition of the Anti-Trust Law.[6]

Labor claimed that the Act was not aimed at it by Congress. The reasons which led to the adoption of the Act have frequently been described. Behind its enactment was a desire to protect the consuming public and small business man from oppressive prices and unfair competition arising from control of industry by huge combinations of capital.[7] Assuredly there was no public clamor for the restriction of efforts of organized labor. From a study of the Act itself,[8] little can be learned definitely as to whether labor was meant to be included or not. At best, it is highly debatable whether Congress meant to regulate labor unions by this means.

The history of the court's attitude towards the effect of the Act on labor is the story of a swinging pendulum. Courts, early in its history, determined that it was applicable to labor.[9] Thus in *United States v. Workmen's Amalgamated*,[10] in 1893, a labor union conducted a lawful strike in an attempt to unionize a plant. The court held this to be a conspiracy in restraint of trade. It said that though the coalition of men, in its origin and general purposes is lawful, this is no ground of defense, when it undertakes to restrain interstate or foreign commerce.[11] Similar cases quickly came out of the federal courts.[12] Labor was in a very precarious position as the "strike" was in danger of being outlawed by the Anti-Trust Act since effective strikes usually tend in some way to interfere with interstate commerce. It was not until 1908 that the question was presented squarely before the Supreme Court in *Loewe v. Lawler*.[13] The American Federation of Labor had organized a nationwide boycott against hats

5. United States v. Hutcheson, 61 Sup. Ct. 463, 469 (1941).

6. Shulman, *Labor and the Anti-Trust Laws* (1940) 34 ILL. L. REV. 769.

7. Comment (1940) 49 YALE L. J. 518; Warm, *A Study of the Judicial Attitude toward Trade Unions and Labor Legislation* (1939), 23 MINN. L. REV. 255.

8. See note 2 *supra*.

9. Some say these decisions are "reactionary". FRANKFURTER AND GREENE, THE LABOR INJUNCTION (1930) 142 *et seq.*

10. 54 Fed. 994 (E. D. La. 1893).

11. *Id.* at 1000.

12. United States v. Debs, 64 Fed. 724 (N. D. Ill. 1894); Loewe v. Lawler, 208 U. S. 274 (1908).

13. 208 U. S. 274 (1908).

manufactured by the D. E. Loewe Company, and against stores[14] handling such hats. The Supreme Court decided for the first time that labor unions were subject to prosecutions under the Act by holding that this secondary boycott obstructed the free flow of interstate commerce. It is not clear whether liability was predicated on the ground of illegality of the means employed, a nation-wide secondary boycott, or because of the restraint of trade by this means.[15] Nevertheless it settled the question whether labor unions are within the scope of the Anti-Trust Act, and decided that measures adopted by labor unions may be prohibited where the effect is to impose a restraint on interstate commerce, regardless of labor's aims.[16]

Following labor's protracted pleas for immunity, the Clayton Act, called labor's Magna Carta[17] was passed in 1914. Section 6 and Section 20 were direct responses to organized labor's cries for relief from the effects of the judicial interpretation of the Sherman Act. "This statute was the fruit of unceasing agitation . . . and was designed to equalize before the law the position of workingman and employer as industrial combatants."[18] This Act provided that "the labor of a human being is not a commodity or article of commerce"; that labor unions can lawfully carry out their "legitimate objects" thereto and

14. Such a "secondary boycott" is now considered illegal. The form of pressure usually characterized as a "secondary boycott" is a combination to influence *A*, by exerting some sort of economic or social pressure against persons who deal with *A*. This has been condemned by federal and state courts whether the means of pressure upon such third persons dealing with *A* be a threat of strike, listing on an unfair list, coercion, or publication notices. A boycott of stores selling hats manufactured by Loewe Co. would be a secondary boycott. Hopkins v. Oxley Stove Co., 83 Fed. 912 (C. C. A. 8th, 1897); Bedford Cut Stone Co. v. Journeyman Stone Cutters Ass'n, 274 U. S. 418 (1927); Gompers v. Buck Stove and Range Co., 221 U. S. 418 (1911); Seattle Brewing Co. v. Hansen, 144 Fed. 1011 (N. D. Calif. 1905).

15. From the Act's terminology and purpose, it seemed clear that the Act sought to prevent all restraints of trade through combinations, *etc.*, regardless of legality or illegality of means. Yet in the application of the Act to industrial combinations, the "rule of reason" was developed. Under it a combination is illegal if it is exercising its monopolistic control *unfairly* and *oppressively*. If other competition thrives, and if it also can be shown that there was no undue enhancement of prices and no unfair practices as against competitors, the combination, it would seem does not come within the condemnation of the Act even though a restraint was shown. Standard Oil Co. of N. J. v. United States, 221 U. S. 1, 60 (1911); United States v. American Tobacco Co., 221 U. S. 106, 178 (1911); United States v. United States Steel Co., 251 U. S. 417 (1920). However, in its application to labor, never once did the courts speak of "reason" when applying the Act until after the passage of the Clayton Act. United Mine Workers v. Coronado Coal Co., 259 U. S. 344 (1922); United Leather Workers v. Herkert, 265 U. S. 457 (1924).

16. "To read into the act a restraint upon the legitimate activities of labor unions is to give it a meaning which was never intended." Warm, *A Study of the Judicial Attitude toward Trade Unions and Labor Legislation* (1939) 23 MINN. L. REV. 255, 347.

17. Gompers, *The Charter of Industrial Freedom* (1914) 21 AM. FEDERATIONIST 957.

18. Duplex Printing Press Co. v. Deering, 254 U. S. 443, 484 (1921).

that they are not to be "construed to be illegal combinations or conspiracies in restraint of law." The Clayton Act gave rise to new litigation and to renewed controversy regarding the status of trade unions in and out of Congress.

In *Duplex Printing Press Co. v. Deering*,[19] a union tried to unionize a plant by means of a sympathetic strike in aid of a secondary boycott. The Court found a direct restraint on interstate commerce. The Court construing Section 6 said that labor unions can lawfuly carry out their legitimate objects, but once they depart from normal, legitimate objects they will be considered in restraint of trade. The Court held that any method resulting in the obstruction of interstate commerce was illegal though the avowed object of the union was to unionize. Section 20 of the Act prohibited the granting of injunctions and restraining orders only in the event of controversies arising out of disputes concerning terms and conditions of employment, *labor disputes*. Therefore, the Court by limiting the definition of "labor disputes" in Section 20, to disputes between the proximate employer-employee relationship rendered ineffective any aid from indictment under the Sherman Act.[20]

Through these dark labor days, one decision appeared that temporarily brightened the horizon for labor unions.[21] Though impliedly assuming that anti-trust acts applied to labor, the Court, at long last, seemed to recognize that the resulting incidental restraint on trade was not the primary purpose of labor's efforts but an incidental object or at most a means of forcing unionization. In this case, applying the "rule of reason", the Court held that a labor strike should not be considered in violation of the Sherman Act. As every serious strike interferes with interstate commerce, it would be unreasonable to consider strikes within the Act. Thus, leaving the strike as an effective labor weapon and overruling earlier anti-labor cases.[22]

However if anything survived of the roseate hopes aroused by the Clayton Act, it evaporated with *Bedford Cut Stone Co. v. Journeyman Stone Cutters Ass'n*.[23] Here, the Supreme Court held that the refusal of stone cutters, in every state, to work on non-union stone produced in an Indiana stone quarry was a violation of the Sherman Act. The union contended that their sole purpose in refusing to work on the stone was in an effort to unionize the quarry. The

19. 254 U. S. 443, 469 (1921).

20. BERMAN, LABOR AND THE SHERMAN ACT (1930) 99 *et seq.* However, in the *Duplex* case, Mr. Justices Brandeis, Holmes and Clark dissented vigorously, finding on these facts, that the acts of the labor unions were justified.

21. United Leather Workers v. Herkert, 265 U. S. 457 (1924). A strike was called against an employer to secure better terms of employment. Through illegal picketing and intimidation, manufacture of goods for shipment was prevented, held, not a conspiracy to restrain interstate commerce within the Act.

22. United Leather Workers v. Herkert, 265 U. S. 457 (1924). *Cf.* United States v. Workingmen's Amalgamated Council, 54 Fed. 994 (E. D. La. 1893); United States v. Debs, 64 Fed. 724 (N. D. Ill. 1894).

23. 274 U. S. 37 (1927).

Court, conceding this to be the ultimate aim, declared that regardless of the benefits to labor, a restraint of trade was not justified. In a vigorous dissent, Mr. Justice Brandeis, concurred in by Mr. Justice Holmes, protested that by the use of secondary boycotts the union had merely refrained from aiding and abetting the enemy. Continuing, Brandeis, J., said: " . . . if . . . refusal to work can be enjoined, Congress created by the Sherman Law and the Clayton Act, an instrument for imposing restraints upon labor which reminds of involuntary servitude."[24]

With the failure of the Clayton Act to abate the evils it was intended to remedy, protests against the judicial emasculation of the Act were immediate and strong. In 1932, the Norris-LaGuardia Act[25] was passed to remove the fetters upon trade union activities which according to judicial construction, Section 20 of the Clayton Act had left untouched. These sections of the Norris-LaGuardia Act limited the powers of federal courts in issuing injunctions against labor unions in labor disputes; and further curtailed this power by a liberal definition of the term "labor dispute".[26] This Act does not however prevent the application of the anti-trust laws to organized labor. As applied to labor unions, the Act only sanctions the concerted activities of labor if peaceful.[27] Hence, anti-trust laws cannot be the basis of suits in labor disputes, in cases where the defendants are not engaged in fraud or violence.[28]

With the depression, the United States became more labor conscious. A more liberal attitude seems to have been adopted by the courts. In a labor dispute similar to that seen in the *Duplex* and *Bedford* cases, a labor union was held not to have violated the Sherman Act.[29] The unionization of employees in the building trade was not considered a conspiracy even though an incidental restraint resulted. Then in *New Negro Alliance v. Sanitary Grocery Co.*,[30] the Court held that the Norris-LaGuardia Act enlarged the scope of Section 20 of

24. *Id.* at 65. FRANKFURTER AND GREENE, THE LABOR INJUNCTION (1930) 7, indicates that in previous cases, at least, the decisions were substantiated by some illegality or violence by labor. Here this was not present.

25. Norris-LaGuardia Act of 1932, 47 STAT. 70, 29 U. S. C. A. §§ 101-115.

26. 47 STAT. 70, 29 U. S. C. A. § 113. Labor dispute under this act, was interpreted to include any controversies over terms and conditions of employment between persons not occupying the proximate relationship of employer-employee. It was only required that there exist a substantial relationship, *e.g.*, dispute between employees of a factory and its general distributor.

27. 47 STAT. 70, 29 U. S. C. A. § 106.

28. Cinderella Theatre v. Signwriters Union, 6 F. Supp. 164, 169 (E. D. Mich. 1934); United States v. Drivers Union, 32 F. Supp. 594 (D. C. D. C. 1940).

29. Levering & Garrigues Co. v. Morsin, 289 U. S. 103 (C. C. A. 2d, 1933) (strike against building contractors to compel employment of union labor. *Contra*: Aeolian Co. v. Fischer, 40 F. (2d) 189 (C. C. A. 2d, 1930); International Brotherhood v. Western Union, 6 F. (2d) 444 (C. C. A. 7th, 1925).

30. 303 U. S. 552 (1938) (organization interested in the procuring of employment for members of its race).

the Clayton Act defining labor disputes. The Supreme Court found that the purpose of this Act was to legalize and sanction the use of peaceful persuasion in labor disputes. It also said: "The legislative history of the Act demonstrates that it was the purpose of the Congress further to extend the prohibitions of the Clayton Act . . . and to obviate the results of the judicial construction of that Act."[31] This liberal departure from decisions like those in the *Bedford* and *Duplex* cases continued and reached its climax in *Leader v. Apex Hosiery Co.*[32] Though there was violence and damage done by the union members and an incidental restraint resulted, the anti-trust acts were held inapplicable.[33] The test is not whether unlawful acts were committed by the defendants but whether a combination or conspiracy was formed by them with the intent to restrain commerce.[34]

In summarizing the earlier cases interpreting the Act, which lay the foundation and legal precedent for present actions, it is said that these decisions were made at a time when there was too great a willingness on the part of the federal courts to use the Sherman Act as a means of outlawing labor's ends and tactics which didn't square with the court's views of economic and social policy.[35] These cases further indicated a widespread determination to check coercive activities on the part of union organization,[36] and thus eventually, to utilize the Act as a device for the regulation of activities of organized labor.[37]

Recently, under the government's latest anti-trust drive against labor and capital, two cases have arisen in different federal districts.[38] In *United States v. Drivers*,[39] the union was indicted for conspiracy in restraint of trade because seemingly it resorted to violence and intimidation. Here, just as in *Loewe v. Lawler*,[40] the court failed to say whether the union was guilty under the Act because of a conspiracy in restraint of trade or because the union resorted to

31. *Id.* at 562.

32. 108 F. (2d) 71 (C. C. A. 3d, 1939), *aff'd*, 310 U. S. 469 (1940) (union members "sat down" to induce the company to enter into a closed shop agreement, violence and damages resulted). Gregory, *Labor's Coercive Activities under the Sherman Act—The Apex Case* (1940) 7 U. OF CHI. L. REV. 347.

33. Leader v. Apex Hosiery Co., 108 F. (2d) 71, 81 (C. C. A. 3d, 1938). Here the court at p. 74 said: "We entertain no doubt that the appellants (union) should be compelled in the appropriate forum to answer in damages. . . ." But the court found that the union was not liable for treble damages as provided for by the anti-trust laws.

34. Leader v. Apex Hosiery Co., 310 U. S. 469 (1940).

35. Lee, *Labor and Federal Anti-Trust Laws* (1940) 74 N. Y. L. REV. 13, 22.

36. Warm, *A Study of the Judicial Attitude toward Trade Unions and Labor Legislation* (1939) 23 MINN. L. REV. 255.

37. Gregory, *Labor's Coercive Activities under the Sherman Act—The Apex Case* (1940) 7 U. OF CHI. L. REV. 347.

38. United States v. Drivers, 32 F. Supp. 594 (D. C. D. C. 1940); United States v. Hutcheson, 32 F. Supp. 600 (E. D. Mo. 1940), *aff'd* 61 Sup. Ct. 463 (1941).

39. 32 F. Supp. 594 (D. C. D. C. 1940).

40. 208 U. S. 274 (1908).

unlawful means. The court did find, however, that there was only an incidental restraint, previously never considered enough to prosecute unions. Seemingly, therefore, the union was held liable under the Anti-Trust Act for violence. Moreover the court, there, seems to think that jurisdictional strikes are directed towards objects that unions may not aim at. This decision seemed to fall in line with previous anti-labor decisions. However, this case seems to be overruled by the decision in the *Hutcheson* case. In refusing to consider the Norris-LaGuardia Act as affecting criminal prosecutions under the Sherman Act, the court in the *Drivers* case said the immunity from injunctions by the Norris-LaGuardia Act was limited to civil injunction suits. In the *Hutcheson* case, the Court showed little patience for so narrow a construction and said that it is improper to argue that acts, which on the equity side of the court are allowable conduct, are not permissible under the criminal law. So, to hold the Norris-LaGuardia Act solely applicable to equity suits for injunctions, would be reading such legislation in a spirit of mutilating narrowness. It would be interesting to speculate on what would happen to the decision in the *Drivers* case should the union officials appeal to the Supreme Court.

In the *Hutcheson* case, the district court first dismissed the indictment.[41] However, it distinguished the *Drivers* case, on the grounds that violence, threats and force there accompanied the jurisdictional strike. Seemingly the cases, therefore, appear to be reconcilable. However, the language used in the *Drivers* case seems to condemn the very idea of a jurisdictional strike, with or without violence, because it aims at an inevitable breach of contract of another union with an employer, contrary to the spirit of the National Labor Relations Act.[42]

The question of jurisdictional strikes has become increasingly important and indications seem to point to a more increased importance in view of current problems. Since the advent of the two major "parent" labor organizations, the Committee of Industrial Organization and the American Federation of Labor, these jurisdictional disputes have taken on national importance and their effects are nationally felt. A "jurisdictional strike" is the strike occasioned by disputes between either, (a) two local unions of the same parent body, or (b) two identical unions in different parent bodies. The dispute is as to which union shall supply the labor for a certain type of work, or, in other words, which union is to occupy a certain working field. The strike, an historic labor weapon, is used customarily to support demands of labor for shorter hours, higher wages or better working conditions—in all these cases the conflict arising between employee and employer. Here, in jurisdictional strikes is a strike against the employer used because of "internal" labor problems; problems that seemingly should be settled within labor's ranks without harming industry. However, we find that the jurisdictional strikes have been supported as lawful by

41. 32 F. Supp. 600 (E. D. Mo. 1940).

42. 44 STAT. 449, 29 U. S. C. A. § 151.

a number of our courts in the past.[43] Now, in view of Justice Frankfurter's strong opinion, holding that such disputes are "labor disputes" within the definition of "labor disputes" as defined by the Clayton Act and clarified and broadened by the Norris-LaGuardia Act, the *Hutcheson* decision must be interpreted as meaning that the government must maintain a hands-off attitude in all jurisdictional disputes unless the conduct of the parties is not protected by the Clayton Act or unless the government finds labor and non-labor groups acting in cooperation.

Justice Frankfurter, in arriving at the majority opinion, has placed the limitation of non-labor cooperation upon the broad rule that peaceful activities conducted by labor unions (when such acts are within the Clayton Act immunity) cannot be the basis for prosecutions under the Sherman Act. But such activities must not be carried on in collaboration with non-labor groups.[44] This, however, is by way of *dictum* for in the *Hutcheson* case there was no evidence of non-labor or employer collaboration. But this limitation was more definitely ruled in *United States v. Brims*.[45] No doubt courts will continue to place this limitation upon labor union activities and will hold that collusive agreements between union and employers to restrain trade may be prosecuted under the Sherman Act.

At the present time it seems settled that the question whether labor union conduct constitutes a violation of the Sherman Act is to be determined by reading the Sherman Act, Section 20 of the Clayton Act and the Norris-LaGuardia Act as a code for labor conduct. As long as its activities are conducted peacefully and not in collaboration with non-labor groups, a union may strike, picket or boycott an employer without fear of criminal prosecution under the Sherman Act regardless of any restraining effect such activities may have on interstate commerce.

43. International Brotherhood v. International Union, 106 F. (2d) 871 (C. C. A. 9th, 1939); New Negro Alliance v. Sanitary Grocery Co., 303 U. S. 552 (1938); Lauf v. Sherman, 303 U. S. 323 (1938); Terrio v. S. N. Nielson, 30 F. Supp. 77 (D. C. La. 1939).

44. United States v. Brims, 272 U. S. 549 (1926), involving a conspiracy of mill work manufacturers (non-labor group), building contractors (non-labor group), and union carpenters (labor group) whereby the union carpenters agreed not to work on non-union goods, doing this in the interests of labor.

45. 272 U. S. 549 (1926).