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LABOR UNIONS-APPLICATION OF SHERMAN ACT WHERE REFUSAL OF UNION TO ADMIT EMPLOYEES TO MEMBERSHIP TENDS TO DIMINISH EMPLOYER'S INTER-STATE BUSINESS

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LABOR UNIONS—APPLICATION OF SHERMAN ACT WHERE REFUSAL OF UNION TO ADMIT EMPLOYEES TO MEMBERSHIP TENDS TO DIMINISH EMPLOYER'S INTER-STATE BUSINESS—Action by petitioning employer against officers and members of defendant union to recover treble damages under the Sherman Anti-Trust Act and to obtain injunctive relief. Petitioner was a trucking concern carrying freight under a contract with the A&P Company. Defendant union called a strike of all the truckers of the A&P Company in Philadelphia for the purpose of enforcing a closed shop. Violence occurred during the strike, with a union man being killed. A member of the petitioner partnership was tried for the homicide and acquitted. The A&P Company and the union eventually entered into a closed shop agreement, and all of the contractor truckers except petitioner either joined the union or made closed shop agreements with it. The union refused to negotiate with petitioner and declined to admit any of its employees to membership. Then the A&P Company, at the instigation of the union, cancelled its contract with petitioner, and because of the union's refusal to negotiate with petitioner and to accept petitioner's employees as members, the petitioner was unable to obtain any further hauling contracts in Philadelphia. *Held,* it is not a violation of the Sherman Act for laborers in combination to refuse to work. They are free to sell or not sell their labor without fear of the Anti-Trust Laws. Petitioner's argument that defendant in exercising these rights falls within the condemnation of the Sherman Act, because the defendant's action against it was motivated by personal antagonism arising out of the killing of a union man and because it resulted in driving petitioner out of business in the area, is rejected, because the act manifested no purpose to make any kind of refusal to accept personal employment a violation of the Anti-Trust laws. *Hunt v. Crumboch,* (U.S. 1945) 65 S.Ct. 1545.

This case is just one further demonstration of how very little vitality there is left in the Sherman Act so far as its application to labor combinations and their activities is concerned. Certainly this was a "hard" case for the Court to decide in view of the vicious nature of the union's activity, but it is difficult to see how the decision could have been otherwise if the Court was going to be consistent with its ruling in the *Hutcheson*,[1] and other recent cases.[2] After the decision in the *Hutcheson* case the area in which the Sherman Act could be applied to labor combinations was exceedingly small, for the Court there held

[1] United States v. Hutcheson, 312 U.S. 219, 61 S.Ct. 463 (1941).

[2] Allen Bradley Co. v. Local Union No. 3, I.B.E.W., 325 U.S. 797, 65 S.Ct. 1533 (1945); Apex Hosiery Co. v. Leader, 310 U.S. 469, 60 S.Ct. 982 (1940). Here the United States Supreme Court held that a sit-down strike in a manufacturing establishment was not within the purview of the Sherman Act, although it was concededly unlawful and it interfered with the interstate shipment of manufactured goods. The Court held that the Sherman Act would apply to such a case only where there is an intent to control prices in states other than that in which the allegedly indictable activities were carried on. Here there was not only an interference with production, but there was also an interference with the shipment of completed goods in interstate commerce. The Court, holding that even this last was not a violation of the Anti-Trust Laws, stated that the statute was not aimed at policing interstate commerce. Thus it was determined that the Sherman Act was to have a restricted interpretation. See 39 MICH. L. REV. 462 (1941), for a discussion of this case.

that the Sherman Act, the Clayton Act and the Norris-La Guardia Act must be read not separately, but as interlocking statutes, and that labor activity which was unenjoinable under the latter two acts was therefore uncensorable under the Sherman Act. Thus if one could find that there was an existing labor dispute,[3] out of which the allegedly illegal union activity arose, within the meaning of section 13 of the Norris-La Guardia Act,[4] then that activity is unenjoinable, however evil its objective might be.[5] Similar protection is given to such activity under section 20 of the Clayton Act,[6] and as in the case of the Norris-La Guardia Act the "proper union objectives test" is left out.[7] These two statutes broadly interpreted, as they now are, by the United States Supreme Court, are no longer mere shields to defend the legitimate objectives of unionism, but they have become weapons of offense in labor's battle with management.[8] As Mr. Justice Jackson points out in his dissenting opinion, "With this decision, the labor movement has come full circle. The working man has struggled long, the fight has been filled with hatred, and conflict has been dangerous, but now workers may not be deprived of their livelihood merely because their employers oppose and they favor unions. . . . This Court now sustains the claim of a union to the right to deny participation in the economic world to an employer simply because the union dislikes him. This Court permits to employees the same arbitrary dominance over the economic sphere which they control that labor so long, so bitterly and so rightly asserted should belong to no man." [9] The Court demonstrates once more its unwillingness to pass on the policy questions involved in cases of this type, feeling that such matters are more properly handled by the policy-making body of the government. This leaves the employer in a very difficult position. He is without remedy under the federal law unless he

[3] Professor E. Merrick Dodd says that the definition in the Norris-La Guardia Act of a labor dispute as including "any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment," does not cover the case here where the union seeks to deny the employer access to the labor market merely because of the union's antagonism to him personally. Dodd, "The Supreme Court and Organized Labor, 1941-1945," 58 HARV. L. REV. 1018 at 1053 (1945).

[4] Norris-La Guardia Act, 47 Stat. L., c. 90, § 13, p. 71 (1932), 29 U.S.C. (1940) § 113.

[5] Wilson & Co. v. Birl, (C.C.A. 3d, 1939) 105 F. (2d) 948. But see American Guild of Musical Artists v. Petrillo, 286 N.Y. 226, 36 N.E. (2d) 123 (1941), where the New York Court confronted with a statute very similar to the Norris-La Guardia Act read into it the "proper labor objectives" test. The court held that if the objective of the union's picketing was illegal then a valid labor dispute could not exist.

[6] 29 U.S.C. (1940) § 52.

[7] "So long as a union acts in its self-interest and does not combine with non-labor groups, the licit and the illicit under § 20 [29 U.S.C. (1940) § 52] 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." United States v. Hutcheson, 312 U.S. 219 at 232, 61 S.Ct. 463 (1941).

[8] Hunt v. Crumboch, 325 U.S. 821 at 828, 65 S.Ct. 1545 (1945).

[9] Id. at 830.

can bring his case within the very narrow area in which the Sherman Act may still be applied to the labor union.[10] The position of the petitioner's employees in the principal case is also a difficult one. It might be interesting from this standpoint to consider the case in connection with the case of *James v. Marinship Corporation*.[11] There the highest court of the state of California held that a union could not maintain a closed shop, and at the same time maintain an arbitrarily closed union. Here the effect of the Court's decision would seem to be the exact opposite; although the point was never raised, for the defendant union in this case was permitted to maintain a closed shop, and, at the same time was upheld in arbitrarily denying union membership to the petitioner's employees. In the *James v. Marinship Corporation* case the persons excluded were excluded because they were of the Negro race. The Court found that the fact that a worker was a Negro did not give him interests opposed to unionism and therefore that this exclusion was not in pursuance of a proper union objective. In the *Hunt v. Crumboch* case, the persons excluded were excluded because of the union's antagonism toward their employer not because these excluded workers had interests opposed to unionism. This would seem to be a clearly improper objective, but the federal statutes which prohibit the issuance of injunctions against labor combinations in various situations nowhere mention the test of "proper union objectives," and thus seem to exclude it as a factor in determining whether the Court should have enjoined the union's activity here. If the economic pressure exerted by the union grows out of a labor dispute, then under this act the union objective would seem to make no difference. In this connection it is to be noted that the majority opinion indicates that defendant's conduct might amount to an actionable wrong under the laws of the state of Pennsylvania,[12] wherein the alleged wrong was committed. Therefore it cannot be said that this case is in direct conflict with the *Marinship* case. All that this Court is holding is that the defendant union's act of denying union membership to petitioner's employees is not actionable under the Sherman Anti-Trust Act,[13] even though the petitioner was thus driven out of interstate commerce in the State of Pennsylvania.

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[10] For example, see Allen Bradley Co. v. Local Union No. 3, I.B.E.W., 325 U.S. 797, 65 S.Ct. 1533 (1945). Here the Court held that a labor union which, in order to further its own interests as a labor union, aids businessmen in gaining monopoly control over an area, thus permitting price increases, etc., which are violations of the Sherman Act, is itself guilty of a violation of that act.

[11] (Cal. 1945) 155 P. (2d) 329. See LABOR UNIONS, p. 668, infra.

[12] This is in line with what was said in the case of Senn v. Tile Layers Protective Union, 301 U.S. 468, 57 S.Ct. 857 (1937), that the legitimacy of the objects or concerted labor activity is a matter of state policy.

[13] Hunt v. Crumboch, 325 U.S. 821 at 826, 65 S.Ct. 1545 (1945), where the Court in discussing the application of the Sherman Act said, "That Act does not purport to afford remedies for all torts committed by or against persons engaged in interstate commerce. . . . Whether the respondent's conduct amounts to an actionable wrong subjecting them to liability for damages under Pennsylvania law is not our concern."