Labor monopoly (1963 folder)

WHERE LABOR UNIONS GET THEIR POWER

Strikes that closed ports and newspapers—and threaten major aerospace companies—raise the question again: How did unions get their power? Why can they operate in ways denied employers? J. Mack Swigert, labor-law partner in the firm that the late Senator Robert A. Taft headed, has made a new analysis of labor's power.

by J. Mack Swigert, *Authority on Labor Law*

Today, there is a widespread feeling that unions need further regulation. How is this to be achieved? The public must understand that this is not a simple problem. Union power has many roots. Here are the major ones.

1. Public Sympathy for Unions

One of the ultimate sources of union power is the public sympathy which arose in the early sweatshop days and which has persisted in a large group of the population even though the conditions which originally created sympathy no longer exist.

Public identification with the weakness of the individual worker in his relations with the large corporate employer seems to have created a David-against-Goliath sympathy. Many seem to forget that, if the union was originally David, for many workers it is now itself Goliath. Also, there is a certain class feeling in this country—a tacit admiration for Robin Hood, who robbed the rich to help the poor.

In addition, one must bear in mind that we are a nation of employes. Most adults are not in business for themselves, but are employed by somebody else. Many employes, even when not union members, tend to feel that "unions are on our side," even though many union objectives are basically selfish and against the interest of the nonunion majority.

Basically, it has been this underlying public sympathy which has enabled the unions to obtain the legislation and special treatment from public officials and communication media which today is a direct source of their power.

This prounion sympathy has been particularly evident among intellectuals and members of the educational community. Because of this factor, many economics and industrial-relations textbooks and reference works tend to present facts and weight arguments in favor of the union position. These intellectuals, also, when called upon to give advice to government representatives or to serve as arbitrators or members of fact-finding panels, tend to lean in favor of the union position because of their sympathy for the union movement.

2. Labor's Political Strength

Votes are the currency of politics. Because of the public sympathy referred to above, the formidable union machinery for getting out the vote and for collecting political-action funds, and also because the unions have many members who presumably share a common point of view, many politicians believe that the unions control a substantial number of votes. They believe that the unions, when aroused, can cause officeholders to be elected or defeated.

As politicians make laws and enforce them, this idea that unions can influence the direction of thousands or even millions of votes leads politicians who want to keep their jobs or advance in their profession to bend in the union direction when a union issue is before them.

Through COPE [AFL-CIO Committee on Political Education], the unions are now able to collect and expend enormous sums of money in the political arena. They have also had the support of the ADA [Americans for Democratic Action] and certain other groups of similar political bent.

The growing effectiveness of union political action on local, State and national levels is an important source of union power.

3. Favorable Laws

(a) **National Labor Relations Act:** This federal labor law protects employes in their right to form and support unions. The Act creates a special status for unions and gives them special rights and privileges of great importance and enjoyed by no other economic group. Among these special rights are the following:

(1) A union designated by a bare majority of employes in an appropriate bargaining unit becomes the representative of *all* employes in the unit—including those who are opposed to the union.

(2) Moreover, such union becomes the *exclusive* representative of such employes.

(3) The employer *must* bargain with the union so designated on all aspects of wages, hours and working conditions.

(4) The subjects of collective bargaining are broadly defined in section 8(d) of the Act as encompassing wages, hours and other terms and conditions of employment. Because of the generality of this phraseology, almost any conceivable subject is placed in the area of collective bargaining and consequent union interference with management decisions.

(5) The employer may not *interfere* in the internal affairs of the union in any way and may not terminate an employe or otherwise *discriminate* against him because of union activity.

(6) Excepting in States which legislate otherwise, the employer is permitted to sign a *compulsory union-membership* contract. Such a contract ordinarily requires all employes to join the union within 30 days and remain members thereof as a condition of further employment.

(7) Exclusive jurisdiction over the subjects covered by the Act is vested in an administrative board—NLRB—which has ordinarily been dominated by members sympathetic with unions.

(b) **Exemption from Sherman Act:** Although unions may originally have been subject to the Sherman Act, the Supreme Court in later years has ruled that, because of the Clayton Act and the Norris-La Guardia Act, unions cannot be regarded as legal monopolies or combinations in restraint of trade—even though they intentionally and maliciously put employers out of business—unless they are acting in conspiracy with an employer. *This exemption from the antitrust restraint* applicable to employers is an important source of union power.

(c) **Practical exemption from Corrupt Practices Act:** Through the Taft-Hartley Act, enacted in 1947, Congress attempted to put unions under restrictions of the Federal Corrupt Practices Act and thus limit the use of union funds in political campaigns.

In a subsequent test case, the UAW-CIO was found not guilty of violating the amended Corrupt Practices Act even though its telecaster, Guy Nunn, gave widespread publicity to union-backed candidates in the 1954 primary and general-election campaign, and even though his propaganda was paid for out of the union's general funds accumulated out of the dues of the members.

For all practical purposes, the failure of this test case seems to have freed unions from the restrictions of the Act and has enabled them to amass large political war chests and to spend the money in such a way as to further the special interests of the union leadership. This has enhanced union power.

(d) **Norris-La Guardia Act:** Because of the Norris-La Guardia Act and similar legislation in many States, it has become very difficult to enjoin violations of contract or law by labor unions even when the injury resulting from the violations is irreparable. This protection is extended by legislation only to unions.

The Norris-La Guardia Act itself is particularly important because, for practical purposes, it closes the doors of *federal* courts to employers seeking injunctive protection against illegal union conduct. In these situations, the federal judge would ordinarily be the most effective remedy, because he not only has a special status of respect in the community, but is also appointed by the President for life and, therefore, is not subject to the usual political pressures.

Money damages are ordinarily not a very effective remedy for the employer, because they do not, as in the case of an injunction, stop the illegal conduct at the time it is going on. A damage suit is usually not tried until at least six months or a year after the event.

Secondly, unions follow the tactic of refusing to settle a strike until the damage suit is dismissed. Thus, it is dismissed before it ever comes on for trial, and, therefore, operates only in a remote way as a deterrent to illegal union conduct. Of course, there are special situations in which the damage remedy results in the collection of money from a law-violating union, but these situations are quite exceptional.

With respect to injunctions, the Norris-La Guardia Act applies a double standard not applicable to other individuals or economic groups—a double standard which substantially enhances union power with respect to employers, members and the public at large.

4. Special Treatment From Courts

Largely because of public sympathy and effective political action, as indicated above, unions not only benefit from favorable legislation, but also are singled out for special and favorable treatment from courts, arbitrators, law officers and other public officials.

Labor-violence cases, when presented in police court, are customarily continued until the strike is over and then dismissed. The reluctance of many courts to issue and to enforce injunctions against unions is well known to lawyers.

Police assigned to strike duty often look the other way when union violence occurs. Even the FBI is reluctant to intervene in labor disputes. Many States have statutes forbidding or limiting the use of State highway police in such disputes. A tendency to lean in the direction of the union when the question is a close one is observed throughout almost the entire hierarchy of public officials.

Favorable treatment of unions is particularly marked in the case of State and federal administrative officials and employes who deal directly with labor problems.

State departments of labor, workmen's compensation commissions, unemployment commissions, industrial commissions, mediation boards and labor boards are almost uniformly staffed with union members or former union officials or persons otherwise closely associated with and sympathetic to the union movement. This is true even though these agencies are charged with the protection of all workers, including the great majority who are nonunion.

Similarly, the U. S. Department of Labor, the National Labor Relations Board, and, to a considerable extent, the Federal Mediation and Conciliation Service, as well as other agencies dealing with labor problems, are staffed largely with union members or sympathizers.

Since the advent of the Kennedy Administration, the National Labor Relations Board has openly moved in a direction very helpful to organized labor.

The unions now have a clear majority of union sympathizers on the Board.

During the past two years, under the leadership of the new Chairman of the Board, numerous precedents have been overruled and discarded, and the labor law has been substantially changed without legislation.

In almost every instance, the change has favored organized labor against the employer or nonunion employes and has been retroactive. As a result of the Board's continuing rejection of precedents and retroactive overruling of interpretations of law previously established by Board decisions and relied on by employers and others in the industrial relations field, no employer can be sure today that any action taken by him which might prove harmful to a union will be sustained by the NLRB.

The tendency of this policy is toward a government of prounion men instead of a government of law. This uncertainty tends to discourage employers from attempting to resist union demands and activities and is, therefore, an important contemporary source of union power.

This tendency toward a government of men instead of law—favorable to unions—appears to extend all the way to the White House.

Recent presidential intervention in the steel strike and the West Coast airframe-industry dispute benefited the union and weakened the employer. There has been no com-

parable Executive action against unions and none seems likely or even possible.

This factor of favorable treatment from the courts, law officers and other public officials is a further important source of union power.

5. Favorable Treatment From Press

Generally, unions get favorable treatment from the national wire services, radio and TV. These are important sources of public opinion.

Most news writers belong to unions or are union oriented. It is natural for them to slant stories which might otherwise place the union in a bad light. Besides being protected by their friends in the large news-gathering and dissipating agencies, unions also obtain considerable publicity for their affirmative programs. This favorable treatment is an additional source of power.

6. Right to Strike and Boycott

The right to strike is recognized and protected by the Taft-Hartley law and miscellaneous other legislation, including the Norris-La Guardia Act. In the Taft-Hartley law, "strike" is defined as a "concerted stoppage of work" or a "concerted slowdown or other concerted interruption of operations by employes."

This legal right of employes to band together and withhold their services in concert from a particular employer is an obvious source of union power. The Sherman and Clayton acts, and general public policy against monopoly, deny other business entrepreneurs a right to band together for the purpose of influencing price or wilfully inflicting economic harm in this way.

Unions are also permitted to advocate and advertise consumer boycotts against employers with whom they have a controversy, even though the Taft-Hartley law and the Landrum-Griffin Act have substantially limited their previous right to engage in secondary boycotts.

Businessmen are generally not permitted to advocate in this way a public boycott of their competitors, suppliers or others with whom they have business relations.

As there is almost no limitation of the right to strike, the use of the strike weapon is often abused. The strike power is frequently used to force retention of surplus or excess personnel and in support of various forms of featherbedding. Strike power is also used to force union recognition without recourse to the election procedures provided by the NLRB.

Sometimes a small group, through use of the strike power, is able to shut down virtually an entire operation or industry. In Pittsburgh, for example, a strike by a union representing a small number of steel-mill railroad employes was able to shut down an entire steel mill.

7. Unions' Picket System

The great and traditional source of union power is the picket line. This probably ranks along with compulsory bargaining, required by the National Labor Relations Act, as one of the two most immediate and potent sources of union power in this country today.

The picket system includes two types of picketing—peaceful and violent. Both can be highly effective. Peaceful picketing—even when only one man with a banner is present—is effective because the working population as a whole has come to recognize this symbol placed in front of a place of business as a quarantine signal. Millions of workingmen have been disciplined and educated by unions to believe that they are doing wrong when they walk past a fellow workman who is carrying an "on strike" banner or an "unfair" banner. Therefore, in many situations, the mere presence of a man with a banner in front of an employer's place of business brings great economic harm to the employer.

In situations where the peaceful picket line is ineffective, the violent picket line usually does the job. It creates physical injury, property damage and fear. Most people do not want trouble. They will not risk physical injury or property damage to continue business relationships with a besieged employer. Through keeping third persons from taking the jobs of strikers, the picket line enables the union to monopolize the jobs in the struck plant. It is a coercive power weapon employed by the union to bludgeon the employer into submission. In their economic relationships, employers possess no comparable weapon.

8. Tradition of Threats and Violence

Closely associated with the picket system, but having an effect beyond the picket line, is the union tradition of threats and violence. The labor movement in this country has been characterized by many violent strikes. The more spectacular of these in recent years, such as Kohler, Perfect Circle, Republic Aviation, Southern Railway, and Southern Bell Telephone, have received widespread publicity. Hundreds of lesser strikes, however, have been accompanied by widespread acts of violence and terrorism. Even in so-called "peaceful" strikes, petty coercions, such as nails in the driveway and verbal threats, are almost always present. Most people do not want trouble. Therefore, this well-known tradition of threats and violence helps union leaders keep workers in line and is a source of union power.

Fear of some form of reprisal is a factor which helps union organizers sign up workers for union membership. It helps union leaders control union meetings and direct the votes of the members. The standing vote is very common in union meetings. In certain situations, a member may feel that he is risking personal injury by standing up and being counted against a proposition strongly urged by union leadership.

Fear of ostracism may exist even when there is no fear of actual physical injury. Most unions encourage class feeling. Members are encouraged to feel that they do wrong if they stand with the employer against fellow workers. The threat of ostracism is itself a potent weapon when directed against the ordinary man who just doesn't want any trouble.

In many instances, the union threat extends far beyond mere ostracism. Each year there are many strikes characterized by shooting, dynamiting, physical beatings, mass picketing, car rocking, window smashing, paint throwing, and other forms of injury to person and property.

9. Loyalty of Union Members

Another important source of union power is the dedicated loyalty of many hard-core members. Almost every local has a hard core of members who attend meetings regularly and who sincerely believe in the union movement. With many of these individuals, unionism is almost a form of religion. They deeply believe that unions have advanced the workingman and that employers would exploit workers ruthlessly if it were not for the existence and continued vigilance of labor unions. These dedicated members are a very important source of strength in all unions.

10. Compulsory Membership

During recent years, unions have used strikes and the threat of strikes with great success in forcing compulsory-membership provisions and checkoff clauses into a high per-

centage of the contracts in the two thirds of the States of the union where such contracts are lawful.

Under these provisions, there is no longer even the pretense that a union is a voluntary association. With these clauses in the contract, workers must belong and pay their dues in order to hold a job in the plant. In effect, the union is given the power to tax usually reserved solely to the sovereign. Although the Taft-Hartley Act gives employes some protection against discharge at the request of the union for reasons other than nonpayment of dues, the existence of compulsory-membership contracts is a very important source of union power and control over both employes and employers. Also, unions benefit greatly and are strengthened by the fact that employers can be made to collect the dues for the union before the employe ever receives his pay.

11. Unlimited Size of Unions

The fact that the law permits unions to function as "internationals" is a root of union power. The union which is certified as the exclusive bargaining representative in a particular plant is usually not the local but the international union, which may have its headquarters and center of control hundreds of miles from the particular plant.

Through the provisions of its international constitution, and its usual power to appoint receivers, displace officers and take over the assets of the local if considered necessary, international officials have great practical power over the local and its members.

Craft unions also have apprenticeship systems, and membership cards which attract and hold members. As a practical matter, many skilled men can't even get a job without one of these cards. The international receives its tax-free financial support from locals throughout the country and is able to build up huge strike funds—and also large welfare funds, pension funds and the like. Through the granting or withholding of strike benefits, the international is able to control the course of the negotiations at the local level. Through using strike funds to pay employes to strike, the international often can cause small employers to give in to union demands.

As there is no limitation on size, international unions can also organize an industry vertically as well as horizontally—as in the case of the Steelworkers, who represent ore mines, boat crews, and other groups in all phases of the industry.

The true picture of modern collective bargaining, therefore, is not that of a group of employes banded together to bargain with their own boss. Instead, an organization representing hundreds of thousands of employes throughout the country bargains with an employer who may possibly have only a hundred people working for him.

The fact that the law permits union bargaining power to be centralized in huge international organizations, which exercise discipline and tight control of the union funds, the union locals, and the individual members, and which are run by an "expense-account aristocracy" of professional union managers, is, of course, an important source of union power.

12. Weakness of Employers

In any catalogue of the sources of union power, this item cannot be overlooked. Some industries are so sensitive that the employers cannot take a strike of any duration and remain in business. In other industries, direct labor costs are such a small percentage of the total cost that it is not considered practical to stand up to the union. These factors enable unions to be very strong in such industries.

Sometimes employers do not have the financial strength to withstand union pressures. These employers cannot go to the brink, where most important labor issues are ultimately settled. They cannot risk a strike, so ultimately must submit to the union demands.

In other situations, however, the source of union power may lie to a considerable extent in the weakness of the employer himself. Many employers regard labor relations as a nuisance.

They want to get the negotiations over with as soon as possible. They have no stomach for a fight. They do not understand the ponderous and time-wasting machinery of collective bargaining. In some instances, employers are even physically afraid of the union.

Many employers are opportunists. To save a few cents on wages, they are willing to make concessions to the union which over the years may cost them a great deal more than an extra 2 cents or 3 cents in wages. Their philosophy is to settle today and take their chances on tomorrow. If they cannot pass the cost on in price, they may be able to save the difference by changes in operations.

In dealing with employers of this type, professional union leaders, rich with experience, know that if they stand their ground, the employer will give in. Union leaders regard such employers as weak. Just before Christmas, the President asked the Longshoremen's Union to postpone a shipping strike for another 90 days "in the national interest." The international vice president of the union refused, explaining: "They're very weak, we'll lick 'em fast."

The weakness of employers—no matter how justifiable its cause—is an added source of union power.

CONCLUSIONS

Like banyan trees, unions today draw strength from many roots.

Favorable legislation and favorable treatment from courts, law officers and other public officials, and from news media, are important sources of union power. So are the right to strike and boycott, the picket system and the tradition of threats and violence.

Compulsory membership and checkoff and the unlimited size permitted by law also buttress union power. The hard core of members, and the vulnerability, disunity and weakness of employers, contribute to the strength of these organizations. In addition, there are the strong roots of public sympathy and effective political action.

Today, unions are big business—rich—tax-free—and run by a new class of well-paid professional union managers.

On the political front, unions, acting through their grand lodge, the AFL-CIO, constitute a national Tammany Hall—with political machinery which functions in their self-interest from coast to coast. The influence of these unpoliced organizations, which are capable of shutting down basic industries and destroying small business, is felt in all walks of life. At few points are unions responsible for anything—even to their own membership.

There is a growing feeling that the national interest now calls for additional restraint on union power. The Supreme Court recently suggested that Congress correct the Norris-La Guardia Act to permit federal courts to stop union strikes in breach of contract. Many believe that the antitrust laws should be amended to cover unions. Others believe that a more fruitful course would be to withdraw some of the special privileges conferred by existing laws, which were enacted to encourage the growth of unions when they were small and weak, and which seem out of place today. A basic review and revision of union privileges and immunities seems in order if the public interest is to be protected. [END]