

## TRADE UNIONISM IN A FREE ENTER- PRISE ECONOMY

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### I

THE nation is relatively free from widespread strikes, but it is clear that explosive forces in the field of industrial relations are only temporarily held in leash; organized power and the disposition to use power in the resolution of labor disputes are still present and may at any moment precipitate disruptions in basic industries on a scale and for a duration that will burden public welfare to an intolerable degree. Events of the past year have forced a reluctant public to realize that action must be taken to protect the economic life of the community from both small and large groups of highly organized workers. A notably blind zeal on the part of government to give operative meaning to that journalistic jargon, "equalization of bargaining power," has created a situation in which organized workers not only have the power to shut off essential supplies and services, but also the readiness to use that power over small issues. There is no balance here. No business organizations have ever existed which would have dared act in a comparable manner respecting essential industries and services. Clearly something drastic must be done to protect the public interest from strikes. The problem is not limited to the directly essential industries, but includes industry-wide strikes generally, since practically every type of industry or business is essential when considered on a national scale.

The immediate public concern about trade unions derives from the threat, or certainty, of devastating strikes. In consequence, most suggestions for remedial action are intended to limit either the right or power of unions to strike. Potential strikes are of the utmost importance and action must be taken to hold them within tolerable limits. The current preoccupation with strikes reflects, however, an inaccurate and incomplete analysis of the problem, and consequently most of the remedies suggested would be either ineffective or harmful.

The *right* to strike is not an absolute right but it is a fundamental condition of human freedom; any interference should be held to the absolute minimum required by the public interest. The *power* to strike, however, is

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a different matter. Except under the most extreme circumstances the right of workers, either as individuals or as groups, to quit work should be held inviolate—this should apply to government workers equally with workers in private employment. The power to strike, however, is measured by the ability of a union to exercise harmful and costly coercion. Union power derives fundamentally from and is proportional to potential or demonstrated ability to exercise harmful coercion. Privately, no candid labor leaders would deny this statement; publicly, they demonstrate its validity by their unqualified opposition to any proposed restraints.

This observation that power to exercise coercion, both economic and personal, is the essence of unionism is not per se a condemnation of coercive power and its exercise by voluntary groups. Without power to coerce, unions would at best be a species of conference or public relations club; at worst they would not even be recognized or listened to at all by managers or administrators. Unions to be unions must have power and if necessary be willing and able to use it in a manner to command attention and full consideration of all reasonable interests that lie within the control or discretion of management.

Currently, however, unions simply have too much coercive power. They have more power than they need to achieve all the legitimate, constructive actions for which unions are an appropriate agency, and too much coercive power for the safety of the public interest. It is entirely fatuous to assume that given power they will not use it. The problem of a satisfactory public policy respecting trade unionism lies, then, in this matter of delegation of the coercive power of government to unions in the minimum measure required for effective union action. If power were held to the minimum necessary to achieve all the constructive actions of which unions are capable, there would be little need of any further supervision over the manner in which unions administer their internal affairs and apply their coercive power. Only in the case of industries or services that must of necessity be continued in operation would it be necessary to go further to impose some restraint on the *right* to strike.

## II

In a succession of statutes beginning with the Act of 1888, Congress has fumbled toward a national policy of facilitating, promoting, and protecting the organization and collective action of workers through officially approved types of trade unions. More recently the federal courts have changed the legal status of unions in a revolutionary way, both by supporting the legislative program of Congress and, except for the more fla-

grant types and modes of tortious acts, freeing unions from practically all restraints imposed by previous legislation and court decisions.

Much criticism and abuse has been heaped upon Congress, the federal courts, and administrative agencies for the undoing of the old order. Doubtless some of this criticism is well founded, but for the most part the difficulty does not lie there. The old order was essentially inconsistent; it accorded to workers practically complete freedom to organize in any scope and manner they pleased, and to engage in collective action on matters of interest to workers, but hedged this freedom with restrictions and restraints to a degree that made it practically ineffective except for strategically situated groups of workers. Unions of such strategically situated groups of workers in many cases preyed almost at will on the public whereas the advantages of unionism were in effect denied to the great mass of workers. Few tears need be shed for the passing of that type of old order.

The difficulty stems primarily from the fact that the new order instituted by Congress and the federal courts is both incomplete and based upon unsound assumptions of fact. It reflects failure to take into account certain basic economic facts, and gross misunderstanding of the nature of unions and so-called collective bargaining, and the limited aspects of the industrial relations problem for which unions are an appropriate agency. In consequence, unions have been aided by government to acquire and use power in ways and in degrees that are not consistent with the public interest. In developing this program it is only fair, however, to observe that Congress and the federal courts were supported by a strong public opinion. A more adequate public understanding is, then, basic to the development of a better considered policy respecting trade unionism.

Prior to 1930 government policy respecting unions in general tolerated but did not facilitate union organization. The policy, as reflected in federal court decisions, was concerned largely with limiting the use of coercive power by unions to extend organization and to gain union advantage through restraint of trade. This line of policy on the part of both Congress and the federal courts was entirely consistent with popular opinion and attitudes, which in turn were basically a reflection of the trend of economic and cultural developments during the decades 1900 to 1930. Except for minor set-backs this was a period of sustained high-level employment, rapidly rising real income, continued reduction in hours of work, and improvement of working conditions; a golden age literally, in which opportunity for the mass of workers expanded rapidly and with

reasonable continuity. Reacting to these trends in conditions it was the popular opinion that, except for women, children, and other sub-standard groups, the proper role of government was that of preventing or limiting restrictive or inflationary pressures through coercive action by organized workers. In retrospect, the fact that restrictive and limiting action was not taken in equal measure against business combination is understandable but regrettable; the era was simply too progressively prosperous to justify extensive tinkering with the entrepreneurial agencies to which credit for the favorable trends was popularly accorded; also the times were not propitious for the development of those would-be godlike creatures which more recently have appeared in distressing numbers—the planners.

Prior to 1930 the railroads were the single exception to the trend of government policy as outlined above. In this industry Congress not only passed special laws to mitigate or prevent strikes, but also added its coercive power to facilitate peaceful organization, and to promote collective action on a national basis. This special government labor program on the railroads did not represent any basic difference in economic or political philosophy respecting industrial relations or the role of the government therein, but was merely a consequence of following counsels of expediency in dealing with developments in this basic public utility. Industry-wide union organization and industry-wide bargaining were established by the Federal Railroad Administrator (an arch conservative) as an expedient method of handling labor relations during the period of World War I railroad operation by the government. Attempts by carrier managements, after resuming control in 1920, to cast off the yoke imposed by government culminated in the railroad strikes of 1922. The Railroad Labor Act of 1926 which marks a different departure in government policy toward unionism, and which provided in part a precedent and pattern for the government policy that developed after 1930, was scarcely more than a ratification by Congress of an agreement worked out by the unions and the carriers. The act facilitated and strengthened union organization but its principal features were provisions to facilitate peaceful settlement of disputes in accordance with specified methods and standards. Although the Railroad Labor Act of 1926 served as a pattern for Congressional policy after 1930, the pattern was followed only with respect to facilitating organization; all elements of the act designed to prevent strikes and effect settlement of disputes on the basis of prescribed methods and criteria were omitted. Indeed, a considerable part of current proposals for changing government labor policy for employment not covered by the act would do no more than add the omitted elements of the act.

The revolutionary change in federal labor policy after 1930, as reflected in both legislation and court decisions, was determined by the fact of widespread, persistent unemployment and the resultant frustration that so effectively paralyzed all groups of economic functionaries—owners, managers, workers, and consumers. Government took over with the New Deal, timidly at first under President Hoover, but with a torchlight parade under President Roosevelt. Like practically every other element of the New Deal program, the several elements of the labor policy established by legislation were given a two-sided justification—one side *humanitarianism*, the other *inflation* or *reflation*. It would be futile to speculate as to which of these was the basic objective. Perhaps most people, along with President Roosevelt, found no difficulty in convincing themselves that these were only two sides of the same thing; certainly the program was highly popular. In time, also, the Supreme Court became a New Deal Court—that is, an inflationist court, so that it quite naturally followed the inflationist line in decisions dealing with trade unionism.

*Inflation* is not an adequate characterization of the radical change in economic theory that gained widespread popular acceptance and became the general basis of government policy in the 1930's, and which in fact continues to date to be the popular economic doctrine, and the basis of both government and union economic policy. It would not appear necessary here (even if space permitted) either to explain fully or to argue the merits of an economic theory on the basis of which the federal government during the 1930's did in fact take over a major share of responsibility for the national income and its distribution. It suffices here to note that practically every New Deal measure was designed and administered to inject new money into circulation and thus effect inflation and an expansion of the flow of money income. Whatever other objectives the government may have had in mind, the major argument for its policy toward trade unionism was to make unions effective inflationary agencies. This was done by Congress, the federal courts, and administrative agencies dealing with labor matters by: 1) facilitating union organization—this by tying the hands of the employer by unfair labor practice rules; failure to restrain unions from coercing non-union employees; abolition of "yellow dog" contracts; practically freeing unions from injunctive restraints; and sanctioning a free use of coercive action through strikes, boycotts, and picketing; 2) by increasing the ability of unions to exact higher standards of wages, hours, and other working conditions—this by the bare majority rule; compelling employers to bargain with certified unions subject to an administrative test of good faith; throwing the weight of govern-

ment mediation and arbitration in favor of higher labor standards; imposing union security and check-off rules; and by largely eliminating independent unions. While putting this program into effect Congress did not impose any of the restricting, limiting, or mitigating elements of the Railway Labor Act of 1926. Such limitations would have been inconsistent with the objective of making unions effective agencies for spreading unemployment, raising wages and other labor standards and thus promoting inflation. The New Deal Supreme Court came right along by supporting the new government legislative and administrative program, and by eliminating most of the restrictions previously imposed by court interpretations of the Sherman Act.

The war period, with one exception, continued and increased the trend of government action established in the 1930's; the exception was the dragging anchor placed on wages. But this dragging anchor did not prevent an increase of about 20 per cent in the "stabilized" purchasing power of the average hourly wage—this over and above the so-called "fringe issue" gains. In anticipation of the end of the war the federal government picked up just where it had left off to use unions and so-called collective bargaining to effect inflation and thus avoid deflation. This inflationary policy continues; prices are still rising and the next round of union demands for inflationary wage increases with potentially devastating strike threats is under way.

### III

So here we are with a government policy respecting unions that is an integral part of the highly specialized type of planned economy that was created to deal with the depression of the 1930's; a labor policy that has only incidental, if any, constructive relation to industrial relations. Government is still engaged in promoting union organization, and strengthening and facilitating coercive action by unions with continued inflationary consequences. The inevitable consequence of a continuation of this program will be a disastrous depression following the collapse of the present boom. The current labor policy does not have any place whatsoever in a free enterprise economy, and neither does it make sense in any planned economy. No matter which type of economy we may choose, the current policy respecting trade unionism is due for such a drastic revision that precious little of it will be left. A mere patching process will not do. The problem is not merely a matter of devastating strikes; it goes to the very heart of the problem of developing and operating a satisfactory economic and political order.

Suppose the nation were to eschew free enterprise in favor of a planned

economy—planned to maintain economic stability at a high level of employment. Government would be obliged to take control of the labor market in even a more rigorous manner than prevailed during war-time—this for the simple reason that we could not have stability and at the same time permit unions to continue disruptive, distortional, and inflationary action. Workers would of necessity be subject to some substantial degree of control respecting place of work, choice of occupation, allocation of work, wages, hours, and other working conditions. Collective bargaining as anything more than a mild expression of opinion about worker interests would all but disappear; unions would become a labor front, and this would be true even if politically organized workers were in control of the planning. Doubting readers and those who desire a fuller statement of the role of unions in a planned economy are referred to Sir William Beveridge, the dean of British planners.<sup>1</sup>

Practically everybody, however, eschews a planned economy and swears fealty to the objective of restoring and maintaining a free enterprise system. It is certain that most people have an entirely inadequate understanding of the elements and requirements of a free enterprise system, but nevertheless their expression of faith should be taken seriously. For a brief, but competent, popular statement of the essentials of a free enterprise system, and the conditions necessary for its preservation and effective operation, the reader is referred to a pamphlet by Henry C. Simons.<sup>2</sup> As a basis for outlining an appropriate government policy respecting trade unionism, it suffices here to point out that in a free enterprise system all the basic economic processes are controlled through the automatic processes of free markets for services as well as commodities. It is not enough, however, that markets be free from domination or restriction—they must also be technically efficient. The role of government in such a system is limited largely to facilitating effective markets and to establishing and policing rules necessary to promote and protect free and fair competition among buyers and sellers of goods and services.

There is a place for collective action by unions in a free enterprise system, but the role is decidedly limited. The role is, moreover, decidedly more limited than that accorded unions in the period prior to 1930; merely to go back to the policy of that era would not be adequate. In those days few industries or occupations were highly organized so that the interferences permitted the unions in getting special privileges for their members did not impose unbearable burdens on the remainder of the

<sup>1</sup> Beveridge, *Full Employment in a Free Society* 198–201 (1945).

<sup>2</sup> Simons, *A Positive Program for Laissez Faire* (1934).

-economy. Comparable and proportional conduct by the present mass organization of workers would make impossible the effective operation of a free contract system. We must start all over to devise a workable government policy.

#### IV

The outline of a proper government policy respecting trade unionism is most simply and clearly approached by defining the essential constructive service of a union. The essential task or service of a union is to deal directly with managers for fair treatment on any matters of direct interest to all the employees who may be subject to the direction and control of a given management. Whatever else may be involved, employees are directly interested in rates of pay, continuity of employment, allocation of work, job standards, personal treatment, hours, etc. Employees need an organization not only capable of giving effective expression to their interests in such matters but also, if necessary, capable of forcing management to give full and fair consideration. Given effective labor markets, "full and fair consideration" is not easy but is practicable of determination; fair standards are merely the equivalent of those prevailing in the local labor market area, and good personal treatment is to be treated like a self-respecting human being. The place for unions thus outlined is a necessary and important role, but that is the limit of their role in a free enterprise system. To go further would be to grant unions the right to exercise coercive power to gain special privileges for their members. Contrary to popular notion unions seldom bargain *against* management—they bargain *through* management for special privileges ultimately at the expense of non-members. As a long run matter union gains are never made at the expense of competitive profits; and only under highly specialized and limited circumstances are union gains made at the expense of monopoly profits; unions in most cases merely add more monopoly burdens.

The central objective of government policy should be to encourage, promote, and protect collective action between employees and management, but to confine the economic impacts of such collective action to the individual operating company. With respect to the great mass of unions, this objective can be attained by a few rather simple changes in present law. Amend the Wagner Act to: 1) with exceptions noted below, limit the permissible bargaining unit to all the employees, exclusive of management, of a plant or establishment, or, if desired by the workers, a single operating company; one plant, establishment or company unit to have only one union; 2) with exceptions noted below, a union to be limited to the employees of the bargaining units defined in 1) above. Only if judged

imperative to make possible effective union organization and bargaining in establishments having a small number of employees, and in types of business such as building construction in which employment is characteristically of short duration, the National Labor Relations Board would be empowered to permit and promote local labor market area unions and bargaining units. Only within the limits as defined above would the organization activities of unions be permissible. Within these limits, however, organization by workers should be effectively protected and facilitated by government.

Legislation should be enacted to prevent the management unit unions and area unions as established above from combining or conspiring with one another. In the case of the area unions, legislation should be enacted to provide government supervision of agreements to make certain that standards agreed to were not substantially in excess of those prevailing in the local market area for comparable grades and types of service, and to prevent monopolistic action respecting jobs, materials, processes, and prices.

Public utilities, railroads, and other services, for which continuity of operation is essential, present a problem not adequately provided for in the preceding proposals. Union organization and bargaining should, as in other cases, be on an establishment or company basis; this for the simple objective of restoring as much as possible competitive determination of labor standards. In such industries, however, the public interest cannot endure the burden of strikes even if limited to a company or establishment basis. In all such cases, which should be held by administrative judgment to the absolute minimum, compulsory arbitration should be established by law, as a procedure of last resort. This step should follow use of procedures of adjustment and adjudication of disputes on the basis of standards designed to facilitate prompt adjustment of disputes and to keep employment in such industries relatively attractive. The present procedures for dealing with labor on the railroads is inadequate, and short of questionable applications of wartime legislation, we have no provision for government control of strikes in public utility and other essential industries. Government control of union action on the railroads is inadequate because: 1) it does not provide sufficient protection against strikes; 2) it has fostered and preserved an arbitrarily determined wage structure that maintains inequitable treatment as among railroad workers, and a wage structure out of line (both above and below) with competitive standards; 3) working rules are inequitable as among railroad workers and unduly burden railroad operation; 4) adjustment procedures are too slow

and cumbersome; 5) responsibility for labor standards and rate making are not sufficiently joined. These weaknesses of the present regulation of union action on the railroads should be taken into account in designing a regulatory policy for union action in essential industries.

The program outlined above would largely eliminate craft and occupational unions—but they are largely obsolete anyway. It also would destroy the present great national unions which frequently encompass nationally an entire occupation or industry, and in many cases spread over many industries of divers sorts; but there is no possible excuse for such unions in a free enterprise system. The question will be raised if such drastic change in the status of unions is politically feasible; the answer is that unions will fight with all their power against even the mildest restriction; if merely scotched they will sustain the fight. Irrespective of union opposition, the changes suggested are necessary to the operation of free enterprise, and if public opinion really supports free enterprise, the program is politically feasible.

Would unions limited to a company or area basis be able to effect stable organizations and have sufficient coercive power to command the consideration of management? The currently large number of effective independent unions on a company basis appears to be a positive answer to this question. Nothing in the proposed policy would prevent unions from employing specialists or, short of combination and conspiracy, participating in a national secretariat or trade association for mutual aid.

The positive arguments for the policy as outlined are: 1) it would reduce union power to proper proportions without impairing the right to organize, or, except for essential industries, the right to strike; 2) it would reduce to workable limits the monopolistic and restrictive powers of unions; 3) whatever offset unions provide for employer monopoly would be retained by company bargaining; 4) collective bargaining, except in the case of area and utility unions, would be held automatically to marginal productivity limits by the simple fact that if labor costs were raised above competitive levels in the industry, unemployment would be imposed on the union members; 5) unions would be able to compel employers to provide a fair deal but no more.

This program would be a bitter pill for the present unions; their alternative is to be warped into a labor front in a planned economy and lose all essential freedom of action along with the rest of us. Halfway measures would be no measures.