Antitrust Exemption in Collective Bargaining

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ABSTRACT

Federal and state antitrust laws in the US date back to 1890 and have been used to protect competition in various marketplaces. While labor unions have generally been found to be exempt from the antitrust laws, there have been cases where courts have held that labor organizations have lost their antitrust exemption because of certain behaviors that threatened to reduce competition. This paper will review some of the more important cases dealing with labor union exemption and will offer recommendations for preserving antitrust exemptions.

INTRODUCTION

The recognition of an antitrust exemption for collective bargaining activity created a unique relationship between these two major topic areas of US law. Both bodies of law grew from perceived patterns of social and economic injustice in American society that resulted in statutory enactments separated by a timeline of approximately forty-five years. Given the historical background leading to the legislation it would seem reasonable that the federal legislators probably never envisioned the subsequent relationship between the law of antitrust and the law of collective bargaining.

The first federal law to address antitrust in the US was the Sherman Anti-Trust Act (1890), which had followed the passage of certain state laws. The Sherman Act outlawed corporate trusts which had been created to control certain industries including oil and railroads. The trusts had consolidated the governance of otherwise competing companies in the affected industries. The net effect of the trust consolidations was to reduce competition and make it possible for the trusts to raise prices to the detriment of consumers who purchased the products sold by companies in the trust.

Economic theory held that competitive markets were good for commerce in that inter-firm competition resulted in lower product pricing which was beneficial to consumers purchasing the output of the producing firms. Activities that interfered with the workings of competitive markets were considered “anticompetitive” and in “restraint of trade.”

Collective bargaining is the legal process whereby employees band “together to deal with their employers and the fact that the desires of employees and employers sometimes clash.” (Walsh, 2013) The National Labor Relations Act (1935) gave legal protection to private sector employees engaging in collective bargaining. The Civil Service Reform Act (1978), also known as the Federal Service Labor-Management Relations Statute, gave similar rights to non-postal federal government employees and several state statutes gave rights to employees of those states (ibid).

The statutes provide the means for employees to organize and deal collectively with their employers in negotiating compensation and other terms of employment. The process logically envisions the execution of a contract between employer and union.

Antitrust and collective bargaining might seem far apart on the legal spectrum, but their paths began to converge in 1914. Congress had determined that antitrust law required greater specificity following the
passage of the Sherman Act due to a number of challenges. The Clayton Act (1914) amended the Sherman Act and gave statutory antitrust exemption to certain labor activity. Section 6 of the act stated:

“...Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor....organization, instituted for purposes of mutual help... or to forbid or restrain individual members of such organizations from law fully carrying out the legitimate objects thereof, nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws.” (ibid)

Further legislative protection for labor activity grew from passage of the Norris-La Guardia (1932) which sought to legislatively strengthen the Clayton Act by providing that

“No court of the United States, as defined in this chapter, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute.” (ibid)

From a public policy perspective, Congress appeared to be extending legal protection to employees involved in labor disputes by using antitrust law to give broad protection to such labor activity. It would appear initially that antitrust law was being used to deflect business management efforts to restrain labor activity by arguing that collective activity was anticompetitive or in restraint of trade. The Clayton Act and Norris-La Guardia specified the exact opposite: collective labor activity was exempt from the provisions of antitrust law.

THE COURTS REFINE THE COLLECTIVE BARGAINING EXEMPTION

The statutory antitrust exemptions contained in the Clayton and Norris-La Guardia Acts were very broad and, some would argue, absolute in nature. As statements of public policy, the statutes furthered the legal protections given to collective labor activity many years before the National Labor Relations Act and the Federal Service Labor Management Relations statute were enacted into law.

The US Supreme Court first addressed the collective bargaining antitrust exemption in United States v. Hutcheson, (1941), a case that dealt with the refusal of union carpenters to work on a project of their employer or on a related construction project. The union carpenters tried to persuade other construction union members not to work on the construction project and to refuse to buy or use their employer’s product. The US Supreme Court ruled that the union activities were protected under the Sherman Act by Section 20 of the Clayton Act and by the definition of a “labor dispute” in the Norris-La Guardia Act.

But, Allen Bradley Co. et al v. Local Union No. 3 International Brotherhood of Electrical Workers et al (1945) drew limits as to labor union activities deserving protection under the antitrust exemption. The very powerful Local 3 IBEW represented employees of New York City electrical contractors as well as employees of electrical equipment manufacturers located within the city. The union obtained closed shop agreements obligating the contractors to purchase only the products of the closed shop manufacturers, thereby precluding the use of products manufactured by companies that did not have contracts with Local 3. The Supreme Court phrased the issue very narrowly:

“do labor unions violate the Sherman Act where, in order to further their own interest as wage earners, they aid and abet business men to do the precise things which the Act prohibits?” (ibid)

and then ruled against Local 3:

“...however, we think Congress never intended that unions could, consistently with the Sherman Act, aid non-labor groups to create business monopolies and to control the marketing of goods and services.”
When a labor union sought, via a collective bargaining agreement with certain large mining firms, to impose wage standards and other conditions on smaller industry firms that were not parties to the collective bargaining agreement, the US Supreme Court found an anticompetitive intent in the union’s efforts. The case of United Mine Workers v. Pennington (1965) grew out of a cross claim filed by partners in a coal mining company against the United Mine Workers of America Welfare and Retirement Fund “alleging that the trustees, the UMW and certain large coal operators had conspired to restrain and monopolize commerce in violation of Sections 1 and 2 the Sherman Act.” One of the contentions in the cross claim was that the conspiracy sought to impose higher wages than the smaller firms could afford to pay, thereby seeking to drive them out of business, and in light of over-supply in the coal mining industry, keep prices higher than competitive market forces would justify.

In its opinion, the Supreme Court said:

“This is not to say that an agreement resulting from union-employer negotiations is automatically exempt from Sherman Act scrutiny simply because the negotiations involve a compulsory subject of bargaining regardless of the subject or the form and content of the agreement...But there are limits to what a union or an employer may offer or extract in the name of wages, and because they must bargain does not mean that the agreement reached may disregard other laws.”

An anticompetitive intent was also the focus of the Supreme Court’s attention in a later case: Connell Co. v. Plumbers and Steamfitters (1975). The plumbers and steamfitters union had entered into a “most favored union” multiemployer collective bargaining agreement with a mechanical contractor’s association in Dallas, Texas. This contractual provision meant that if the union granted a more favorable contract to any other employer, it would extend those more favorable terms to all members of the contractors’ association. Local 100 sought to leverage its multiemployer agreement by entering into subsequent contracts with Connell Co. and other general contractors, with whom the union had no collective bargaining agreements, by which the general contractors would only subcontract all plumbing and mechanical work to firms that had signed the multiemployer agreement signed.

Connell signed the agreement under protest and then filed suit in federal district court to have the contract invalidated as a violation of Sections 1 and 2 of the Sherman Act. Not only did the general contractor agreement not refer to all non-union subcontractors, it specifically sought to limit the general contractors’ use of plumbing subcontractors to those that had signed Local 100’s multiemployer agreement.

Eventually the dispute reached the US Supreme Court which said:

“...This kind of direct restraint on the business market has substantial anticompetitive effects, both actual and potential, that would not follow naturally from the elimination of competition over wages and working conditions. It contravenes antitrust policies to a degree not justified by congressional labor policy, and therefore cannot claim a nonstatutory exemption from the antitrust laws.”

CONCLUSION

The initial antitrust exemptions granted by the Clayton and Norris-La Guardia Acts appeared to be a reasonable, good faith effort to extend protections to labor organizations engaged in legitimate collective bargaining activity. When concerns began to surface that employers might try to use the Sherman Act to thwart collective bargaining activity, the statutory exemptions seemed a reasonable way to reconcile congressional business policy and congressional labor policy.
The initially promulgated exemptions were very broad and absolute in nature. Given such protections, labor unions proved to be adept in using the statutory exemptions as cover in crafting agreements that went far beyond the negotiations for wages, hours, terms and conditions of employment to express anticompetitive intent in ways traditionally precluded by antitrust law. The initial purpose of federal and state antitrust law had been to preserve competition in markets, but unions began to demonstrate an ability to fashion agreements that restrained trade in ways that the authors of the Clayton and Norris-LaGuardia Acts most likely never contemplated. The US Supreme Court, in particular, responded by ruling that certain anticompetitive conduct by labor organizations did in fact violate federal antitrust law.

Based upon the initial understandings that underline the antitrust exemptions extended to collective bargaining, the following recommendations are offered to labor organizations to avoid antitrust challenges:

1. **Limit collective bargaining to appropriate mandatory and permissive topics.** The objective of a collective bargaining effort should be to reach agreement, between employer and labor organization on the conditions of employment for the bargaining unit. The negotiations, and ultimate agreement, should never evidence an intent to reduce competition in the labor market.

2. **The collective bargaining agreement should avoid mentioning the product or output of the employer’s firm.** Given the widely recognized protections reflected in the Hutcheson decision, legitimate discussion of mandatory and permissive topics of collective bargaining should not trigger antitrust concerns. However, when the bargaining addresses the output of the employer’s firm, the discussion is entering the realm of product markets, and the potential for restraint of trade which is a legitimate concern of antitrust law.

3. **Restrict the agreement to the contracting parties in collective bargaining.** Labor organizations run the risk of running afoul of antitrust law when they enter into agreements with parties outside of the collective bargaining context. As noted in Allen-Bradley and Connell, a successful collective bargaining agreement should not serve as a prelude for other industry agreements that may be construed as being in restraint of trade.

**REFERENCES**

1. 15 USC Sections 1-7
3. 15 USC Sections 12-27
4. Pub L 95-454 92 Stat 111
5. 15 USC Sections 12-27
6. 29 USC Sections 101 et seq.
7. 312 US 219 (1941)
8. 325 US 797 (1945)
9. 381 US 657 (1965)
10. 421 US 616 (1975)