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Notes

Union Investment in Business:

A Source of Union Conflicts of Interest

In the last two decades there has been an explosive growth of union capital available for investment. Some of this money has been channeled into businesses which have collective bargaining agreements with the investing union or which compete with businesses which have such agreements with the investing union. The authors of this Note maintain that this type of investment activity can give rise to union conflicts of interest. They find that present legislation and internal union controls are ineffective in coping with the problem and conclude that the time is ripe for both the union movement and Congress to face the problem and to establish a workable standard to which the unions must conform.

INTRODUCTION

According to recent estimates, American labor unions now control more than four billion dollars of investment capital; this is more than twice the amount of capital which unions controlled a mere decade ago. This mounting pool of capital has two sources—membership dues, and employer and employee contributions to union-controlled health, welfare, and pension funds. During the last decade membership dues have been raised as the cost of collective bargaining has increased. Part of the increase has been necessitated by the need for reserves to meet sporadic but costly


2. In 1949, a study by a financial journal estimated that union-controlled investment capital amounted to two billion dollars. Business Week, Nov. 19, 1949, p. 114.

outlays for strikes and for extraordinary organizing expenses. Moreover, dues have been increased to finance the growing political and educational activities considered necessary or helpful to the labor movement. During this same period, the achievement of fringe benefits such as health, welfare, and pension funds has been a primary collective bargaining objective of all major American unions. A by-product of union success in achieving this goal has been the accumulation of substantial capital to finance these negotiated benefits. The growth of reserves for strikes, organizational purposes, and fringe benefits has thrust upon the labor movement a large and unanticipated mass of capital available for immediate investment.

This increase in union controlled capital has necessitated a parallel growth in the responsibility assumed by union officials. They are compelled to become financiers as well as organizers, administrators, and negotiators. The union leader of today faces the problem of how best to manage this growing investment fund for the benefits of the union's members. In the past, the union movement placed heavy emphasis on conservative, noncontroversial investments such as government bonds. Although these investments presented little, if any, potential for a conflict of interests, they deprived the unions of the higher return which would have resulted from a more sophisticated and diversified investment policy. The labor movement has become increasingly aware of this self-imposed disadvantage, and it is now seeking investments which will produce a return comparable to that enjoyed by prudent and experienced investors.

However, a high rate of return is not the only consideration which union officers must weigh in developing union investment policies. As stewards of their unions' funds, the officers must avoid speculative investments and investments which may create a conflict between the financial interests of the union and the collective bargaining interests of the employees represented by the

4. For example, in 1955, the United Auto Workers announced that it was establishing a $25,000,000 strike fund to protect against union needs during a possible strike. Goldberg, AFL-CIO: Labor United 140 (1956).
7. See note 1 supra.
8. This is not to say that the union movement, as a whole, is affluent. An analysis by Business Week magazine of union reports to the Bureau of Labor Management indicates that numerous unions are operating at a loss. See Business Week, June 4, 1960, pp. 82-83.
union. Unfortunately, these employees' needs are such that un-
sound investments and investments which raise potential conflicts
of interests are sometimes required. This occurs when the union
provides financial assistance to a failing employer in order to pre-
serve union members' jobs. Such an investment is normally specu-
lative, and the potential conflict of interest is obvious. However,
the answer to the question of whether the interests of the employees
represented by the union will be properly served by such an invest-
ment is not obvious.

The purpose of this Note is to demonstrate the conflicts of in-
terest problems which may result from union investments in fields
of commerce or industry in which the union performs a collective
bargaining function. Selected instances of union investments will
be examined and the problems presented by these investments
will be discussed in light of the existing statutes, case law, and
internal union controls. However, the focus of this Note will be upon
the activities of the investing union as an organization rather than
upon the activities of individual officials who may misuse their off-

cice for personal gain.¹⁰

I. UNION INVESTMENTS IN THE EMPLOYER'S OR
HIS COMPETITOR'S BUSINESS

A union's investment in a commercial endeavor is prompted by
a variety of motives. Generally, there is merely the desire to realize
a reasonable return on surplus capital. Occasionally, however,
union funds have been used to preserve and/or create jobs for
union members either by rescuing a failing business or by helping
to expand a market for a unionized employer.¹¹ In some cases this
may be the only or most effective service which the union can
render its members. In addition, nominal investments have been
made in corporations with which a union has a collective bar-
gaining agreement for the purpose of obtaining company an-
nouncements and financial data.¹²

But regardless of what motivates the initial investment, a union
becomes involved in a potential conflict of interest when its
funds are invested either in a business with which the union has
or seeks a collective bargaining agreement or in an enterprise which
deals or competes with a business with which the union has or

¹⁰. These activities of individual union officials have been thoroughly
examined by the McClellan Committee. See Hearings Before the Senate
Select Committee on Improper Activities in the Labor or Management
¹¹. See Business Week, June 4, 1960, p. 87.
¹². See Time, Jan. 20, 1961, p. 82.
seeks a collective bargaining agreement. Such an involvement by
the union may occur in several ways: by union control of a com-
mercial enterprise; by union ownership of a financial, but non-
controlling, interest in a commercial enterprise through loans from
union treasuries and union managed funds; or by union owner-
ship of a noncontrolling interest in a commercial enterprise
through purchases of stocks, bonds, or other securities.

A. UNION OWNERSHIP OF A CONTROLLING INTEREST

1. Union Ownership of the Employer-Company

In its most unsophisticated and least common form, union in-
volvement in management arises when the union acquires owner-
ship of a firm whose employees are also represented by the pur-
chasing union. This situation is typified by the experience of the
United Hat, Cap & Millinery Workers Union, AFL-CIO, in
Amesbury, Massachusetts.¹³

The Merrimac Hat Company, which employed members of a lo-
cal affiliate of the Hatter's union, had been losing money because
it was unable to meet the competition of hat manufacturers lo-
cated in the South. When the company was compelled to close,
the International Hatter's Union joined with local business interests
and reorganized the company. The international union became the
largest stockholder in the reorganized company, and today the in-
ternational union's officers are members of the Merrimac Hat Com-
pany's board of directors. The local Hatter's union has a collective
bargaining agreement with the company. According to The Hat
Worker, the international union's official newspaper, the company
is paying wages at the same level as the industry as a whole, the
relationships between the bargaining representative (local union)
and management (dominated by the international union) are ex-
cellent, and the firm is prosperous again.¹⁴

Another situation in which the same potential conflict exists
came to light in the McClellan committee hearings.¹⁵ The hear-
ings revealed that the West Coast Conference of Teamsters had
assumed control of a failing Canadian trucking company to which
the union previously had made loans secured by the company's
stock. The union replaced the old management and operated the
company at a loss for several years to protect the jobs of its

¹⁴. Ibid.
¹⁵. Senate Select Committee on Improper Activities in the Labor or
Management Field (85th Cong.).
members and to maintain a Teamster union "toe-hold" in the Canadian trucking industry. ¹⁶

The nature of the conflict of interests problem created in both of these situations is expressed by a quip which Alex Rose, President of the International Hatter's Union, made concerning the Hatter's experience at Merrimac: "The difficulty is that the workers don't understand our problems."¹⁷ Of course this remark was made in jest, but the time may come when such a remark will be made in earnest by a union leader. Management and employee needs may coincide during the "honeymoon" period immediately following the union's assumption of the managerial function, but it is unrealistic to assume that the needs of both management and employee can be continually served without some compromise of the union's duty to seek the best possible working conditions for the employee.¹⁸

¹⁶ See Hearings Before the Senate Select Committee on Improper Activities in the Labor or Management Field, 85th Cong., 1st Sess., pt. 4, at 1307 (1957).
¹⁸ An example of a reported debate that touches the subject is in the PROCEEDINGS OF THE 17TH ANNUAL CONVENTION OF THE AMERICAN NEWSPAPER GUILD (1950) [hereinafter cited as PROCEEDINGS]. The debate concerned a committee report urging investment of union funds to establish one or more daily newspapers in the United States in an effort to create new competition in the newspaper field. The report was in response to the mergers and suspensions in the industry which had enlarged the number of "one newspaper towns." The threat of monopoly control of publishing in a single city was conceded by both the minority and majority reports of the committee. The difference in their reports was that the minority saw objections to immediate action and urged further study. Following are some excerpts from the debate which point up the concern of the delegates with the principles involved:

. . . but I want to point this out, that economists, including those friendly to labor, are agreed that a situation where one party sits on both sides of a bargaining table is impossible. . . .

. . . I don't think we should sit down on both sides of the bargaining table. It can't be done. There is only one place where it is done. That is in Soviet Russia, and I know that neither the majority nor the minority want that kind of a system. You can't do it in a democracy.

PROCEEDINGS, p. 133 (Speech by Delegate Everett).

. . . It is my observation that when in war we allow our army to use all the forces at its command. . . . It is my feeling that we should allow our International Executive Board to hold out all the means available to be sure our side wins.

PROCEEDINGS, p. 134 (Speech by Delegate Ralston).

. . . I don't think the Guild wants to go in the newspaper business, but we are being forced to go in it for our own survival, for our own salvation.

PROCEEDINGS, p. 137 (Speech by Delegate Klein).

We are a union, and I think we ought to get ourselves settled in the pretty important things, bargaining and negotiating and organizing,
2. Union Ownership of Employer's Competitor, Customer, or Supplier

Unions have established or promoted firms whose employees the union neither represented nor sought to represent but which dealt or competed with businesses with which the union bargained. For example, a local affiliated with the Optical Workers Union, AFL-CIO, established a new corporation to engage in the wholesale optical business in competition with firms with which the local had collective bargaining agreements. The local made unsecured loans from its funds to the new corporation and sold the company's stock to members of the local. The local's purpose in establishing the corporation was primarily to create jobs for its unemployed and secondarily to provide financial return to union members who purchased the stock. While the local did not own a controlling interest in the firm, the local did concede that it, in effect, controlled the company's management. In Bausche & Lomb Optical Co., the National Labor Relations Board (NLRB) had to decide whether the local union had, under these facts, demonstrated a lack of good faith in its bargaining with a competing employer. The Board determined that the local's status as a competitor put it in a position where it might, although there was no evidence that it did, seek wages, hours, or other working conditions from other employers which would promote the competitive advantage of the new firm rather than the interests of the em-

and not dissipate our energies with something of this nature at this time....

PROCEEDINGS, p. 145 (Speech by Delegate Gnetto).

I am not going to stand here or vote in this convention to bind my union to an operation which up to now has been alien to the usual function of a union.

PROCEEDINGS, p. 147 (Speech by Delegate Bucknam).

In looking through the collective bargaining report, I see that one of our planks is that we shall seek unity with craft unions.

Now, on Project X [as the proposal was termed] we seek to become the employers of craft unions. I, for one, don't want to be placed in a position of walking on a picket line in front of a privately-owned newspaper, and on the other end of town find myself cross a picket line because I am an employer of the people working there....

PROCEEDINGS, p. 149 (Speech by Delegate Potoker).

As these excerpts from the debate indicate, many practical obstacles occurred to the delegates in their consideration of the proposal. Subsequently, the majority report calling for immediate action was defeated by substitution of the minority report which counseled further study. No subsequent move by the American Newspaper Guild to enter the publishing field has been successful, although the union has, in various strike situations, sponsored the publication of daily newspapers for the duration of the strike which was preventing publication of the regular daily newspaper in the community involved.

ployees. Because of this possibility the Board dismissed the local union's complaint that the employer, a competitor of the new company, refused to bargain in good faith.20

The formation of the American Coal Shipping Company—a joint enterprise of the United Mine Workers (UMW) and the coal mine operators—has also created a potential conflict of interest. The firm was established to purchase ships and to carry on worldwide sales activities for the coal industry. This joint venture helped preserve the union members' jobs, despite shrinking American coal markets, by opening new foreign markets for American-mined coal.21 In this situation the union leaders wear two hats when dealing with coal mine operators. On one day they are dealing with management as partners in a business venture, and on the next day they are adversaries bargaining with management for employee benefits. It is quite possible that friendships and attitudes developed while consorting with management as a partner may dampen the union leaders' ardor for promoting the employees' cause at the bargaining table.

Another example of this potential problem exists in the sheep industry. The Sheepshearers' Union formed a corporation to manufacture sheepshearing equipment. Corporate stock was sold to union members and the union's executives managed the business. The firms and individuals using this equipment are almost unanimous in their choice of manufacturer, and the firm has become the largest of its type in the country.22 A similar potential conflict of interests was presented by the Seafarers International Union's, AFL-CIO, organization of a corporation to sell "slop chest" supplies to shipping companies with which the union had collective bargaining agreements. Before the corporation-union sales activities were halted by an antitrust action, the firm had acquired a sizeable business.23

The obvious conflict of interests question in these two union enterprises is what economic advantages did the union-owned corporations enjoy by virtue of the unions' bargaining position with the corporations' customers, and were these advantages acquired at the expense of the workers the unions represented. The prices charged the customer-employer for the goods may have reduced the employer's ability to pay increased wages. Or, the customer-

20. Id. at 1558.
22. See The Butcher Workman, March-April, 1961, pp. 2-3. (This Newspaper is the official organ of the Amalgamated Meat Cutters & Butcher Workmen of North Amer., AFL-CIO.)
employer may have purchased inferior goods from the union-owned corporation for the use of the employees. On the other hand, possibly no employee benefits were actually traded for the union-owned corporations' preferential treatment—but the opportunity for such trading existed.

B. UNION OWNERSHIP OF A NONCONTROLLING INTEREST

Where a union purchases the stocks or securities of a corporation with which the union bargains without, at the same time, assuming an active managerial role in the firm, it is still possible for a conflict of interest to arise because of the union's dual allegiance. As a security holder, the union has an interest in the firm and is concerned with the return which will be derived from the investment. Therefore, any given course of action may have repercussions on both the employees represented by the union and the union's investment.

Notwithstanding this potential conflict, several major unions have felt compelled to aid the industries with which they bargain in order to protect their members' jobs. In 1946, the International Typographical Union (ITU) formed the Unitypo Corporation.

Unitypo has started newspapers in various cities in the United States and Canada where members of the I.T.U. have become engaged in a strike or a lockout with a monopoly publisher. It has also rendered encouragement and financial assistance to publishers considered friendly to labor and who were in competition with a newspaper considered unfair by the I.T.U. The activities of Unitypo in various places in assisting newspapers who were competing with so-called unfair newspapers were described in a report of one of its committees as the "development of a new and practical economic defensive weapon for economic pressure on unfair employers through permanent and effective competition."24

The Amalgamated Clothing Workers, AFL-CIO, and the International Ladies Garment Workers Union, AFL-CIO, have established banks which specialize in loans to companies in the particular area of the clothing industry in which each claims jurisdiction.25 The industry primarily consists of small manufacturers who often have little capital and operate on narrow profit margins. Through these loans the unions have managed to stabilize certain areas of the clothing industry and to provide fairly constant employment for union members.26

26. For an exhaustive analysis of the role of the ILGWU in aiding and stabilizing the garment industry, see Wolfson, Role of the ILGWU in
Similarly, the UMW has become a financial force in the coal industry. The UMW has pledged approximately $15,000,000 of Treasury bonds as security for loans which the UMW-owned National Bank of Washington made to coal mine operators. Furthermore, the UMW owns stock in several coal companies; as a stockholder it has encouraged and assisted management in an attempt to revitalize the coal industry through mechanization of the coal mining process.

The potential conflict which this form of investment creates is demonstrated by the Teamsters’ recent experience in purchasing municipal bonds. In order to attract a rubber company to Deming, New Mexico, the city issued municipal bonds for the acquisition of funds to build a new plant. Subsequent to the Teamsters’ purchase of these bonds, the Teamsters intervened in the Rubber Workers Union’s organizing campaign at the new plant. The Teamsters reportedly took forceful steps to become the employees’ bargaining agent for the purpose of insuring that the employees would not be represented by a union which would insist upon

*Stabilizing the Women’s Garment Industry, 4 Ind. & Lab. Rel. Rev. 33 (1950).*

Mr. James Lipsig, Assistant Executive Secretary of the ILGWU, stated in a recent letter discussing investments of this type:

Bear in mind that our general rule is “no such investments.” In the few exceptional cases which may arise, a loan might be granted only in order to safeguard the jobs of our members.

In the few loans which we have made, the amount has been in five figures at most, and were scheduled to run for a period of only a few years.


27. See Business Week, June 4, 1960, p. 87.
28. Ibid.
29. See Time, Jan. 20, 1961, p. 82.

While rapid mechanization seems to be the best hope for the coal mining industry to regain its vitality, see Reiser, *The Economics of the Coal Industry* 161 (1958), the statistics tend to support a contrary view. In 1948, 125,000 miners in West Virginia produced 168 million tons of coal; in 1958, after expending 500 million dollars on mechanization, 68,000 miners produced 150 million tons. By the end of 1960, an average of 36,000 miners had produced about 120 million tons of coal. Francois, *Where Poverty Is Permanent*, The Reporter, April 27, 1961, p. 38.

The situation is similar elsewhere in the coal fields. In Harlan County, Kentucky, there are now (1961) fewer than 5,000 miners where there were 12,500 in 1950. In central Pennsylvania, 75,000 mine-workers were in the mines 20 years ago; there are fewer than 15,000 now. The reason for such employment dislocations has been the rapid mechanization of the industry, which in turn was caused by a desperate need to meet the competition of other fuels for the coal market. In 1900, coal supplied 70% of the nation’s energy requirements. Now it provides only 26.7%. Oil and natural gas are the prime cause of the coal industry’s weakness. *Ibid.*
wages and fringe benefits which would jeopardize the Teamsters’ investment.\footnote{30}

Unquestionably, a similar potential conflict of interest is not presented by the token investments of the United Auto Workers, AFL-CIO (UAW), in various corporations. The UAW owns one share of common stock in each company with which it has a collective bargaining agreement. Its reason for acquiring these stocks was to obtain financial data from the companies with which it bargained. The ownership of these single shares does not create problems of conflicting interests for the UAW. However, the UAW is considering more extensive investments in common stocks because of their higher yield as compared to other union investments.\footnote{31} This possibility prompts the following inquiry: how

30. The United Rubber Workers, AFL-CIO, which had been the bargaining agent for the employees of the firm at its old location in Indiana, attempted to organize the new plant in Deming, New Mexico. The Teamsters, who had purchased the bonds of the municipality which were issued to build the physical plant, intervened in the representation proceedings and sought bargaining rights. Two elections were held; the first was a tie, the second resulted in a majority for the Teamsters. See Rivers, \textit{The Businesslike Mr. Hoffa}, Reporter, Feb. 2, 1961, pp. 28, 29.

In its objections to conduct affecting the election, the Rubber Workers union alleged, among other charges, that “the Teamsters were not a labor organization within the meaning of the Labor-Management Relations Act because of their financial interest in Auburn and should have been excluded from the ballot in the election.” See NLRB, \textit{REPORT ON OBJECTIONS AND CERTIFICATION OF REPRESENTATIVES, AUBURN RUBBER CO. AND UNITED RUBBER WORKERS AND INT’L BD. OF TEAMSTERS, Case No. 33-RC-777}, at 27 (Oct. 6, 1960). The Rubber Workers union also alleged a number of pro-Teamster acts on the part of the employer.

The Regional Director, Mr. Edwin A. Elliott, refused to entertain the objection to the Teamsters’ status on the ground that it was a post-election objection that could not properly be raised. “Had the issue been raised at a proper time the matter might have been litigated at a proper hearing.” \textit{Id.} at 10. Having disposed of the matter on this ground, however, he proceeded to take notice of the fact that the Teamsters union “has for many years been accepted and treated as a labor organization within . . . the Act. No precedent has been established which would deny the Teamsters a place on the ballot because of an alleged conflict of interests.” \textit{Ibid.} The report then analyzed the financial involvement of the Teamsters—its purchase of municipal bonds issued by the village of Deming guaranteed in part by a mortgage on the municipally-owned plant and equipment which was being operated under contract by the Auburn firm. The report noted that the purchase was by a separately-administered pension fund of the Teamsters, and that the fund had no ownership or management rights in Auburn, in the village of Deming, or in any of the agent groups that took part in the sale and transfer of the firm from Indiana to New Mexico. \textit{Ibid.}

Because the report was issued pursuant to a consent election, the findings of the Regional Director stand without further appeal to the full Board. There is no way, therefore, for the Rubber Workers union to pursue their allegation that a conflict of interest existed which prohibited the Teamsters from properly representing the employees.

31. See \textit{Time}, Jan. 20, 1961, p. 82.
much stock or other securities of an employer-corporation can a union prudently acquire without making itself prone to compromising the employees' legitimate needs for the sake of the union's investment?

II. UNION INVESTMENTS AND INTER-UNION RELATIONSHIPS

The fact that any of these investments are made by the international union rather than by the local union is significant in determining whether a particular investment will create a conflict of interests. Certainly, the more remote the source of investment is from the union which deals with the company in which union funds are invested, the more unlikely it is that a conflict of interests will arise. However, because of the relationship which normally exists between the international and the local, a conflict may arise even if the international does the investing and the local does the bargaining.32

Arguably the international union, as a separate organization, can invest its general treasury funds in a business with which one of its local unions has a bargaining relationship without creating an interest conflict for the local. Even though part of the international's investment might come from a fund in which the local has a continuing interest—such as pension and insurance funds—the local's proportionate share of the investment would be very small. Therefore, the local union's interests would continue to be advanced by pressing for collective bargaining gains despite the fact that any gains would increase the cost of labor and make the investment in the employer's business by the international less attractive.

In practice, however, the working relationship between the international and the local will often discourage any independent action by the local which would not be in the parent international union's best interests. By their constitutions, all international unions retain the power to impose restrictions upon local union decision-making.33 In some unions these restrictions are so complete that the local is a mere administrative unit completely dependent upon the international union.34 For example, the international is often vested with the authority to make constitutional changes, to estab-

32. For a general discussion of the framework of the local and international union, see Barbash, Unions and Union Leadership at xiii–xx (1959).
33. See generally Bromwich, Union Constitutions (1959).
34. See Cohn, The International and the Local Union, N.Y.U. 11th Conf. on Labor 7 (1958).
lish organizing policies, to negotiate industry-wide contracts, and to authorize strike action on the local level.\textsuperscript{35} International union constitutions typically (1) prescribe the system local unions may use for financial accounting, (2) require frequent audits, status reports, and other paperwork, (3) call for the international's prior approval of changes to the local's constitution and by-laws, and (4) establish the dues and fees which the local may collect from its members.\textsuperscript{36} The most extreme measure that may be used by the international is to place the local in trusteeship; this is a process by which the international appoints a trustee to administer the local and assume the powers of the locally elected officers.\textsuperscript{37} The threat of trusteeship and the consequent loss of operating control is often an effective block to any local action which might displease the international union.

The international also has effective sanctions that are not as severe as trusteeship. It may change the jurisdictional boundaries of the local thereby altering the local's membership, or it may bring disciplinary action against the officers of the local union.\textsuperscript{38} Although the local theoretically has the power to secede from the international, this power has little practical value as a defensive weapon against a domineering international. Secession rarely can or will be accomplished because many local union charters provide that as long as a minimum number of members remain in good standing and wish to retain the charter, secession is forbidden.\textsuperscript{39} Furthermore, many charters granted by the international provide that the international has reversionary rights in any property or money retained by its local union affiliates. Therefore, the local may lose its assets if it secedes.\textsuperscript{40} Finally, if the local union's mem-


\textsuperscript{36} See Cohn, \textit{supra} note 34, at 8–14.

\textsuperscript{37} Trusteeships shall be established and administered by a labor organization over a subordinate body only in accordance with the constitution and bylaws of the organization which has assumed trusteeship over the subordinate body and for the purpose of correcting corruption or financial malpractice, assuring the performance of collective bargaining agreements or other duties of a bargaining representative, restoring democratic procedures, or otherwise carrying out the legitimate objects of such labor organization.


\textsuperscript{38} See Cohn, \textit{supra} note 34, at 8–10.

\textsuperscript{39} \textit{Ibid.} See 87 C.J.S. Trade Unions § 44 (1954).

bers have a substantial interest in welfare and pension funds which are held by the local or by the international, serious questions will arise as to the disposition of these funds upon disaffiliation.\textsuperscript{4\textdagger}\ The threat of depriving the local's members of these benefits is a substantial weapon in the hands of an international union challenged by a dissident local union.

Courts have taken judicial notice of this almost complete domination of many locals by their internationals, and they have considered the local and the international as one quasi-corporation for service of process on the international.\textsuperscript{42} These decisions lend weight to the argument that the influence of the international upon the actions of its locals is often considerable.

Therefore, where the international exerts considerable influence on the local, it is not really free to act independently or to bargain for advantages that may oppose the parent international's interests. The local serves two masters—its members and its parent body. If the local bargains with a firm dominated by its parent body, the local must, of necessity, have conflicting loyalties where the interests of its members are contrary to the interests of the "employer"—the international union.

While the close relationship between the international and the local may result in a conflict of interests, this relationship also provides the international with an effective means of discouraging the local from making investments that will conflict with its duty to its members. Furthermore, the AFL-CIO's power over the international unions\textsuperscript{43} should provide the leverage by which the internationals can be persuaded to exercise leadership in eliminating conflict problems on both the local and international level.

The AFL-CIO, however, is merely a loose federation of international unions which have divergent philosophies and which are sensitive to external interference. Except for the local's connection with its international, the AFL-CIO has no direct dealings with the local.\textsuperscript{44} Any pressure which the AFL-CIO might exert on the locals in the investment area will have to be through the internationals. Despite these limitations and the existence of large inde-

\textsuperscript{41} Greenberg, supra note 40, at 156.
\textsuperscript{44} See AFL-CIO CONST. art. III, §§ 1, 4; see generally Goldberg, op. cit. supra note 4, at 109–12.
pendent unions which are not members of the AFL-CIO—notably the International Brotherhood of Teamsters and the United Mine Workers—the AFL-CIO has been and continues to be the prime source of direction in the union movement.

Unfortunately, the AFL-CIO's position on permissible union investments is not clearly defined. Its investment goals are unsettled and, although a policy has been announced, the policy has never been clearly articulated. The apparent indecision of the AFL-CIO in this area can be better understood by first examining the evolution of union investment policies.

III. AFL-CIO INVESTMENT POLICY

The classic position of the American labor movement has been to maintain a clear-cut delineation between labor and management. There were to be no entanglements between the two protagonists. Labor believed, and management insisted, that management should manage and that labor's role was to seek the best possible bargain. The union was not a partner with management, but rather a constructive critic. This conception of the union's role prompted development of the union position that direct investments in business were incompatible with the union's bargaining function. Economic conditions in the union movement's embryonic period prompted ready acceptance of this approach. Union treasuries were small. At a time when operating expenses were difficult for most unions to meet, both union leaders and members cultivated a protective and jealous attitude toward their treasuries. They recognized that the realm of finance was a complex area into which they could venture only at the risk of serious financial loss. Therefore, they favored conservative, secure investments with little risk potential. The small sums which were available for investment were either placed on deposit in a savings institution or used to purchase government securities.

45. Classical unionism ... agreed that management has the right to manage, that owners have the right to profit, and that management and owners shoulder exclusive responsibility for the firm. . . . Classical unionism never claimed co-managerial functions or showed willingness to share managerial responsibilities. Strictly limiting its function to the making of demands, it left the employer to decide how these could be fitted into the cost structure and market conditions of his enterprise. AMERICAN ENTERPRISE ASS'N, UNIONISM REAPPRAISED 25 (1960).
46. "Neither the AFL-CIO nor any national or international union affiliated with the AFL-CIO shall invest in or make loans to any business enterprise with which it bargains collectively." Canon 5, AFL-CIO CODE OF ETHICAL PRACTICES 39 (1958).
With union growth, recognition, and success at the bargaining table, the picture has changed. Mounting union funds, in large part a result of union success in negotiating liberal fringe benefits during the past two decades, have made union financial planning a complicated business.\textsuperscript{48} During the same period, the demands of industry-wide bargaining and increased government regulation of union affairs have developed a new type of union leader. Present day labor leaders manage large organizations which have an infinite variety of administrative and financial problems which are comparable to those of a large business concern. It is, indeed, a present-day platitude that union leaders resemble their counterparts in management more than their colleagues in the factory. They are often sophisticated businessmen with a sophisticated investment outlook and their coups in the investment market have been widely reported.

The change is not, however, as great as appearances might indicate. Tradition dies slowly, and the traditional view of the union's proper investment role has been partly preserved in the Codes of Ethical Practices adopted by the AFL-CIO in 1957. These six Codes purport to set forth the principles governing the conduct of union affairs, and they are binding upon all unions which are members of the AFL-CIO.\textsuperscript{49} The cardinal principle governing union investments is simply stated:

\begin{quote}
[A] union, unlike a bank, a trustee, or other fiduciaries is not primarily a manager of funds vested with the duty of enhancing their value and making distributions. Increasing the value of the union's funds should never become an objective of such magnitude that it in any way interferes with or obscures the basic function of the union, which is to devote its full resources to representing its members, honestly and faithfully.\textsuperscript{50}
\end{quote}

From this principle the Codes derived "additional conclusions": (1) investment of all union reserves in government bonds is to


\textsuperscript{49} The AFL-CIO Code of Ethical Practices was approved in sections by the AFL-CIO Executive Council and was affirmed by vote of the Second Constitutional Convention at Atlantic City, New Jersey, in December, 1957. The six ethical practices codes deal with paper locals (locals without members or with fictitious members); health and welfare funds; racketeers, crooks, Communists, and Fascists in the labor movement; investments and business interest of union officials; \textit{financial practices and proprietary activities of unions}; minimum accounting and financial control; and union democratic practices. All unions affiliated with the AFL-CIO were required to adopt the Code by April 15, 1958.

be commended because this helps "to protect and strengthen our democratic institutions"; (2) loans and grants "to promote the organization of the unorganized" are to be encouraged notwithstanding the fact that the return on investment is small and the loan or grant is not secure; (3) sound business considerations should not control union investment decisions.\(^5\)

This theoretical AFL-CIO position was implemented, in part, by the AFL-CIO Executive Council in August, 1960, when the council established a special department to advise national and local unions on the investment of union funds in home mortgages. AFL-CIO President George Meany stated that the new department's objectives were threefold: first, to put sufficient money into the home mortgage field so that the interest rates would be reduced; second, to stimulate construction and therefore provide more jobs in the building trades; and third, to increase the return on union investments.\(^5\)

However, a few months later, the executive council announced a more ambitious plan which appears to signal a retreat from the Codes. The council established a full-time department of investment, directed by a professional investment counselor, to provide assistance to AFL-CIO affiliates in all fields of investment. The stated purpose for the department's establishment was to achieve an increased return on union investment capital.\(^5\) Thus, it appears that more emphasis has been placed on investment yield which heretofore was considered a secondary factor in union investment decisions. Conceivably, with concerted action by the affiliated unions, the AFL-CIO could become an investment force of some magnitude.\(^5\) There is, however, no indication that the AFL-CIO intends to use investments as a coercive weapon in its struggle with management, or that it will materially alter its basic investment philosophy as stated in the Codes. However, the AFL-CIO

\(^5\) Id. at 36-37.
\(^5\) See Time, Jan. 20, 1961, p. 82.
\(^5\) An extreme example of a big union that virtually controls the business of an entire national economy through its investment activities is the Histadrut in Israel. This labor union federation of 200,000 members, one-third of the population of Israel, operates huge industries, finances giant corporations, and develops communal agricultural colonies. "Look behind practically any large industry in Israel today and you will find the ubiquitous Histadrut financial arm. The Histadrut boasts that approximately 30 per cent of the gainfully employed population of the country are employed under Histadrut-owned Heast Ovdim . . . ." Minneapolis Tribune, March 13, 1961, p. 13, col. 1.

The history, policies, and activities of the Histadrut are described in 15 ENCYCLOPEDIA AMERICANA 424b (1960).
has indicated that it is not presently in complete agreement with its own Codes. Furthermore, it is arguable that the Codes are impractical in light of the modern union's size, obligations, and financial needs.

The previously discussed examples of union investment indicate that some member unions are completely ignoring the directions of the Codes. The Codes provide that "neither the AFL-CIO nor any national or international union affiliated with the AFL-CIO should invest in or make loans to any business enterprise with which it bargains collectively."55 Apparently, there has been no attempt by the AFL-CIO to enforce this provision of the Codes.

The formal AFL-CIO position, expressed in the Codes, seems more restrictive than the AFL-CIO union leaders and the affiliated internationals are prepared to accept. However, unless the union leaders establish a reasonable standard and enforce it, the possibility of abuse may prompt action from less sympathetic forces outside the union movement.56

IV. EXISTING FEDERAL CONTROLS—HOW EFFECTIVE ARE THEY

A. PROHIBITIONS ON EMPLOYER INTERFERENCE

1. Unfair Labor Practices

There is no indication that the conflict of interest problems created by union investments were even considered by the drafters of the National Labor Relations Act (NLRA). However, the drafters did find the notion of mixed management and labor responsibility repugnant.57 They observed that "collective bargaining is reduced to a sham when the employer sits on both sides of the table . . . ."58 Consequently, the NLRA provided, as did subsequent amendments contained in the Labor Management Relations Act of 1947 (LMRA),59 that it is an unfair labor practice for the employer to interfere with or dominate the formation or administration of his employees' collective bargaining association. This prohibition applies even though the intention and the consequences of interference or domination are beneficial to the

workers. The thrust of the NLRA, as interpreted by the Board, is to promote the national labor policy of allowing free collective bargaining to resolve labor-management differences. The Board, in administering the Act, has recognized that the purpose of the Act was to draw a clear line between management and employees and to eliminate the possibility of conflicting allegiances. However, the Board has never had to decide a case in which the issue of conflict of interest due to union investments was squarely presented.

The ban on employer interference with internal union operations is provided for in section 8(2) (now section 8(a)(2)) of the NLRA. The legislative history makes it clear that the objective of this section was to prevent the formation of company-dominated unions. When a union acts in a commercial capacity as an employer rather than in its capacity as a collective bargaining representative, it is treated as an employer.

61. See 16 NLRB ANN. REP. 155-59 (1951).
62. 3 NLRB ANN. REP. 108-26 (1938).
63. (a) It shall be an unfair labor practice for an employer—
(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it . . . .

The purpose of Section 8(2) [now 8(a)(2)] is apparent. The formation and administration of labor organizations are the concern of the employees and not of the employer. The Board has held that any conduct of an employer which has the effect of defeating the freedom of employees to carry on this function constitutes an unfair labor practice . . . .

3 NLRB ANN. REP. 125-26 (1938).


64. See reports cited note 57 supra. See also Wayside Press, Inc. v. NLRB, 206 F.2d 862 (9th Cir. 1953); Crager, Company Unions Under the National Labor Relations Act, 40 MICH. L. REV. 831 (1942); Note, Union Domination by Employer—New Approach, 8 W. RES. L. REV. 529 (1957).


65. When the NLRA was reported out of committee by the Senate the Senate Report stated:

In one sense every labor organization is an employer, it hires clerks, secretaries and the like. In its relations with its own employees, a la-
seems to be no reason why the Board and the courts could not view union domination of the management of a business with which the union bargained as employer domination of the union. But while such an interpretation of section 8(a)(2) would not be difficult for the Board to justify, it offers little relief to employees victimized by the conflict of interest. In practice, employees would be reluctant to file a complaint because in most cases the union initially assumes managerial functions to preserve jobs in a failing business. Without union support such a company would probably fail. The worker, therefore, is not likely to insist upon his rights—regardless of how he is treated. Yet without a complaint the Board will not consider an unfair labor practice charge or intervene where a collective bargaining representative has been certified.66

2. Employee Representation Proceedings

Even though the precise question has not been ruled on, the Board appears to have broad discretion to grant or withhold initial certification of a union with managerial interests. The Board is empowered to place appropriate limitations on the choice of a bargaining representative when it finds that public or statutory policies so dictate.67 For many years the Board exercised this discretion, and it refused to place any union that it considered incapable of acting as a bona fide bargaining representative on a representation election ballot. Thus, the Board has refused to allow certification elections where (1) management conceived and organized the labor organization,68 (2) supervisory personnel were responsible for forming the labor organization,69 (3) supervisory personnel took part in the labor organization,70 (4) management...
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Could unilaterally terminate the so-called collective bargaining agreement, or (5) the employer dominated the labor organization. However, in two later cases the Board chose to narrow the scope of the inquiry it will conduct at the time of a representation hearing. In each case the Board refused to consider evidence of employer domination of the union on the ground that such domination would, if true, constitute an unfair labor practice, and in the absence of a charge of an unfair labor practice the Board would refuse to litigate the subject at the time of the representation hearing. Member Murdock dissented vigorously in both cases; he urged that the Board should enlarge the scope of its inquiry at the time of the petition for an election and consider all matters pertaining to unfair labor practices.

The Board has further limited itself by ruling that it will not process any petition for a representation election if there is an outstanding charge of unfair labor practice against the petitioning union. This requirement is not applied without exception—some charges may be waived by the moving party in order to reach a speedy election. However, the possibility of raising the issue of employer-union interrelation may not be open to any interested party to the petition if a speedy election is desired. For example, an intervenor who seeks to obtain bargaining rights for the employees as against another union—which the intervenor claims is really "management"—cannot raise the question, under the Board's present policies, in such a fashion that it will be considered by the Board prior to the election. The intervenor has two choices: it may file an unfair labor practice charge, litigate the issue and wait for a subsequent election which may not be timely; or it may attempt to raise the issue at the representation hearing in which case the Board will probably refuse to hear the matter in the absence of an unfair labor practice charge. Furthermore, in the absence of a formal charge, the Board is likely to refuse to consider the facts if the intervenor files an objection to the results of the election.

From the standpoint of possible conflicts of interest, member Murdock's position seems to be the better view. The Board is free to inquire into any aspect of the petitioning union's qualifications,

74. Ibid. See also Columbia Pictures Corp., 94 N.L.R.B. 466 n.7 (1951).
77. See 24 NLRB ANN. REP. 76 (1959).
despite its exercise of discretion not to so inquire. The Board's determinations after such an inquiry, if reasonable, are binding upon a reviewing court. Since it would be contrary to national labor policy to permit a union with a self-serving interest in the management of a business to serve as the bargaining representative of the employees of that business, the Board should use its full scope of inquiry to make an initial determination whether a union is a proper representative under the definitions of the NLRA. At the certification stage the Board may unquestionably exercise independent initiative; whereas, at a later date it must, if it follows past practices, wait for a complaint to be filed by an aggrieved employee. Therefore, if the Board refuses to exercise authority initially, it may very likely be frustrated at a later date when the conflict is more apparent and no complaint is forthcoming from affected employees.

B. UNIONS AS THE EMPLOYER'S AGENT

If a union merely purchases stocks and securities of an employer-company without assuming an active managerial role, it still may have a dual allegiance which creates conflicts of interest. As a security holder, the union has an equitable share in the firm and a direct interest in the return which it receives on the investment even though it has no direct voice in making the original management decisions. Thus, in this situation the union must always face the question of the effect which union action will have on the business—for example, to what extent would a strike adversely affect the business?

In this situation it would be difficult to classify an employer-oriented union as an "employer" because the NLRA defines an employer as "any person acting as an agent of an employer, directly or indirectly . . . ." The Board would have to apply common-law rules of agency to ascertain whether the union was in fact acting for the employer. However, if the Board were to determine that the union is the employer's agent and that the union discouraged a strike in order to protect its financial interest in the

79. "We are dealing here . . . with a clear legislative policy to free the collective bargaining process from all taint of an employer's compulsion, domination, or influence." International Ass'n of Machinists v. NLRB, 311 U.S. 72, 80 (1940).
81. The change in language introduced in Taft-Hartley was intended to establish that both employers and labor organizations will be responsible for the acts of their agents in accordance with the ordinary common-law rules of agency. H.R. Rep. No. 510, 80th Cong., 1st Sess. 31–32 (1947).
employer-company, the Board would be able to proceed in the manner suggested in the preceding section—that is, the Board could find that the union’s actions constitute an unfair labor practice by the “employer” because he interfered with the employees’ right to free collective bargaining.

The difficulty is that the Board may be unable to find the requisite principal-agent relationship under the statutory test. The Act’s definition of an employer was altered by the Taft-Hartley amendments for the specific purpose of relieving management from responsibility for acts of officious intermeddlers. Prior to these amendments the Act defined an employer as, *inter alia*, anyone “acting in the interest of the employer,” and the Board construed the phrase to include nonagents of the employer who acted in the latter’s interest without his approval. However, the present Act requires a much narrower reading. It is unlikely that a union which had made loans to or bought the securities of a firm would be held to be an agent of the employer simply because the union acted in a manner to benefit the employer. The Board has held that where the employer does not ratify the acts of the third party and the acts were not under the direction of one in a managerial position, the acts will not be attributed to the employer. Thus, in order to avoid responsibility for the actions of persons with a financial but non-managerial interest in the employer-company, the employer needs only to disavow these actions.

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82. H.R. 3020 as passed in the Senate had included as an “employer” any person “acting in the interest of an employer, directly or indirectly . . . .” This was the same definition used in the original Wagner Act. This language was changed because “under this language the Board frequently ‘imputed’ to employers anything that anyone connected with an employer, no matter how remotely, said or did, notwithstanding that the employer had not authorized what was said or done, and in many cases had prohibited it.” Instead, the new definitions provided for the application of the “ordinary rules of the law of agency.” 1 LEGISLATIVE HISTORY OF THE LABOR MANAGEMENT RELATIONS ACT, 1947, at 302 (1948).


85. Before enactment of the Taft-Hartley amendments in 1947, the Board could extend the restrictions of § 8(2) to a city chamber of commerce which coerced workers in the interest of an important employer in the city. American Pearl Button Co., 52 N.L.R.B. 1113 (1943). The anti-union statements of the wife of the employer’s foreman could be curbed. Taylor-Colquitt Co., 47 N.L.R.B. 225 (1943). Under Taft-Hartley, however, a bondholder of the employer’s company who helped propose and solicit signatures for anti-union letters has been considered outside the restrictions of § 8(a)(2). Goodyear Footwear Corp., 80 N.L.R.B. 800 (1948). See also Empire Pencil Co., 86 N.L.R.B. 1187 (1949).

86. The story that third persons give is that they are “volunteers,” and they stick to that story. Indeed Senators Taft and Nixon maintained
C. Effect of Recent Labor Legislation

In 1959 the Labor Management Reporting and Disclosure Act (LMRDA)\(^7\) placed a ceiling on the amount which a union could loan to any union officer or employee,\(^8\) but it made no attempt to restrict the nature or amount of loans or other investments which a union could make to other individuals or businesses.\(^9\) However, the nature and extent of a union’s investments must be reported annually to the Secretary of Labor, and such reports are public records.\(^90\) Senator Barry Goldwater, the Senate Labor Committee’s ranking Republican member at the time of the LMRDA adoption, supported the view that the purpose and intent of these provisions “is that if you get a sufficient spotlight in terms of public information about these transactions, their undesirable effects can be minimized.”\(^69\)

But just how effective is the “spotlight” of public knowledge? Can we reasonably expect that the mere disclosure of investments will curb improper union investments? Probably not—in fact Congress itself seems to be skeptical of the efficacy of public disclosure. Where Congress earnestly intended to eliminate improper investments by union officials, it not only required disclosure, but also enumerated specific types of improper investments.\(^92\) The weakness of disclosure as a deterrent is illustrated by the union members’ failure to request financial reports from the Secretary of

that story in their minority report filed with the Report of the Subcommittee on Labor and Labor Managements Relations in the Southern Textile Industry. . . .

“We seem to us that the subcommittee staff utterly fails to recognize the fact that there are workers who prefer not to join the CIO. Because these workers sometimes by themselves and at other times joined by the minister, the doctor, the drug-store owner, and the proprietor of the local 5 & 10 store, have taken steps to defeat the organizational efforts of the CIO, the staff report assumes without argument that their efforts must have been directed by the employer.”


Although § 302(a) of the amended LMRA prohibits payments by an employer to a union which is the bargaining representative of its employees, this prohibition is aimed at bribery, shakedowns, etc. and not at interest payments. 1 Legislative History of the Labor Management Reporting and Disclosure Act of 1959 at 936–37 (1959).

92. See note 88 supra.
Labor. Furthermore, the manner in which investments must be reported is so vague that little information can be obtained by those who do inspect these reports. Thus, the LMRDA reporting procedure's value in this area appears to be only that it demonstrates the Act's inability to handle the problem.

D. Restrictions on Bad Faith Bargaining and Restraints of Trade

Existing legislation has been more successfully applied in protecting employers from the repercussions of union investments than it has been in protecting the unions' members. In Bausche & Lomb Optical Co., the local union controlled a company which competed with firms with which the union bargained. The Board held that the union, in this situation, was guilty of bad faith bargaining because it had placed itself in a position which provided an opportunity for a conflict of interest to arise. The Board, therefore, permitted the employer to refuse to bargain with the union which controlled a competing firm. Such a competitive factor, the Board reasoned,

renders almost impossible the operation of the collective-bargaining process. For, the union has acquired a special interest which may well

93. For example, the Minneapolis area office of the Bureau of Labor Management Reports, stated in September, 1961, that it had processed "only a handful" of requests for financial statements filed by unions in the reporting area over which the office has jurisdiction. There are more than 1800 locals under the jurisdiction of the Minneapolis office.

94. For example, in the report for the period ended December 31, 1960, the UMW international union listed the following loans and notes receivable:

<table>
<thead>
<tr>
<th>Type</th>
<th>Amount at Beginning of Reporting Period</th>
<th>Amount at End of Reporting Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employees</td>
<td>$2,000</td>
<td>none</td>
</tr>
<tr>
<td>Other Individuals</td>
<td>20,821,402</td>
<td>$20,808,047</td>
</tr>
<tr>
<td>Business Enterprises</td>
<td>13,549,969</td>
<td>13,662,469</td>
</tr>
<tr>
<td>Other Organizations</td>
<td>22,171,967</td>
<td>24,406,967</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$56,545,338</strong></td>
<td><strong>$58,877,483</strong></td>
</tr>
</tbody>
</table>

These entries in Schedule 2 of the Bureau of Labor Management Reports (BLMR) form LM–2 scarcely satisfy the desire of any inquirer for specific information. Yet except for such items as marketable securities and real estate, for which the reporting forms demand itemization, the UMW has used a lump sum wherever possible. The fact that the report, therefore, is available from the BLMR office to any interested citizen is somewhat less helpful than would at first appear to be the case. (Figures from photostatic copy of United Mine Workers report furnished by the BLMR.)

96. Id. at 1562.
be at odds with what should be its sole concern—that of representing the interests of the . . . employees.\textsuperscript{97}

This special interest would seem to exist whether the local or the international is the body which controls or holds a substantial interest in the competing firm. The Board, however, has not had an opportunity to extend the \textit{Bausche & Lomb} doctrine beyond the facts of that case—a local union \textit{controlling} a competing firm. However, if the Board ever considers the problem of international ownership, there seems to be no sound reason why the doctrine would not be extended. The link between local and international is usually substantial, and the involvement of a union in the employer-company through a less-than-controlling investment seems to be potentially as full of conflict as is direct ownership.

Existing law also protects the employer when a union attempts to coerce the employer, as part of a collective bargaining agreement, into dealing with a union-owned company for its supplies or other needs. Again, the employer may, in this case, make a charge before the Board that the union has not bargained in good faith, and, in addition, the union is vulnerable to the sanctions imposed by the antitrust laws.\textsuperscript{98} In \textit{Allen Bradley Co. v. Local 3, Int'l Bhd. of Elec. Workers},\textsuperscript{99} the Supreme Court ruled that it is a violation of the Sherman Antitrust Act for labor unions and their members, in furtherance of their own interests, to combine with employers and manufacturers of any goods to \textit{restrain} competition and to \textit{monopolize} marketing of these goods in interstate commerce.\textsuperscript{100} After \textit{Allen Bradley}, the courts extended the reach of the antitrust laws beyond union-business combinations which result in the \textit{domination} or \textit{control} of the marketing of goods and services to instances of union-business combination which result in \textit{restraints} upon business competition.\textsuperscript{101} Once the union enters into a business, that business is treated as any other business. A conspiracy between the union and that business is viewed as any other union-business conspiracy.\textsuperscript{102} Thus, attempts by a union to coerce

\textsuperscript{97} \textit{Id.} at 1559.
\textsuperscript{99} 325 U.S. 797 (1945).
\textsuperscript{100} \textit{Id.} at 810.
\textsuperscript{101} \textit{United States v. Hamilton Glass Co.}, 155 F. Supp. 878 (N.D. Ill. 1957); see \textit{Comment, Sherman Act Applicable to Union-Nonunion Combination Restraining Commercial Competition}, 33 \textit{NOTRE DAME LAW.} 653 (1958).
\textsuperscript{102} Here, the Union has gone into business, and the use of the Union name or Union funds, or the fact that the profits may inure to Union members does not make this a labor activity. . . . It is, in that capacity,
employers to purchase goods or services from a union-owned company have been found to constitute a violation of the Sherman Antitrust Act. 103

With the requirements of the LMRDA that all investments be openly disclosed, such alleged combinations should be more readily detected where the competitors of the union-controlled firm are reluctant to bring charges. The federal government has the power to initiate antitrust actions without a complaint from an injured party; therefore, it is in a position to attack such combinations on its own initiative. 104 Again, however, there seems to be little possibility that such action will reach the union which has a financial interest in the welfare of a particular company, but which has not engaged in actual collusion with that company. The antitrust laws, therefore, seem to provide protection only to competing employers; they provide no remedy to the employees who are represented by a union which bargains in bad faith because of conflicting interests.

CONCLUSION

At this time it would be difficult to demonstrate that a significant number of employees have had their rights compromised by their unions’ investments. However, it seems imprudent to conclude that the status quo can be maintained in the face of expanding union investment opportunities without the union movement and Congress giving careful attention to union investment practices. Existing legislation is neither designed nor suited to cope with the problem of union investment in an employer’s business, and, although most unions have demonstrated a responsible attitude in this area, the AFL-CIO has not established a clear and practical standard for the unions to follow. Misguided, but well intentioned, union officials could readily precipitate a situation which would prompt legislative sanctions that severely limit even necessary union investments in the employer’s business. Therefore, it would seem incumbent upon the AFL-CIO to take the lead in the examination and resolution of the problems of union investment. In addition, concurrent action by Congress is necessary because of the AFL-CIO’s limited control of its own affiliates and its lack of any control over non-affiliated unions such as the International Brotherhood of Teamsters and the United Mine Workers.

subject to the antitrust provisions applicable to other commercial entrepreneurs.


103. Ibid.