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Labor - Antitrust - Union Held to Forfeit Exemption From Sherman Anti-Trust Act by Agreeing with Employers in a Collective Bargaining Agreement to Impose Uniform Labor Standards on Other Unrepresented Employers. UMW v. Pennington; Union - Management Agreement Fixing Hours of Business Held Not a Violation of Sherman Anti-Trust Act. Local 189, Amalgamated Meat Cutters v. Jewel Tea Co. (U.S. 1965)

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RECENT CASES

LABOR—ANTITRUST—UNION HELD TO FORFEIT EXEMPTION FROM SHERMAN ANTI-TRUST ACT BY AGREEING WITH EMPLOYERS IN A COLLECTIVE BARGAINING AGREEMENT TO IMPOSE UNIFORM LABOR STANDARDS ON OTHER UNREPRESENTED EMPLOYERS. *UMW v. Pennington;* UNION-MANAGEMENT AGREEMENT FIXING HOURS OF BUSINESS HELD NOT A VIOLATION OF SHERMAN ANTI-TRUST ACT. *Local 189, Amalgamated Meat Cutters v. Jewel Tea Co.* (U.S. 1965).

The trustees of the United Mine Workers of America Welfare and Retirement Fund brought suit against the Phillips Brothers Coal Company, seeking recovery of royalty payments allegedly due the Fund under the provisions of the National Bituminous Coal Wage Agreement of 1950. The defendant, a partnership, cross-claimed against the union, alleging that it had conspired with certain large coal operators in violation of the Sherman Anti-Trust Act.[1] The basis of the conspiracy charge was threefold, the main contention being that pursuant to the agreement the union had abandoned its opposition to mechanization of the coal industry and had agreed to impose the terms of the agreement upon all coal operators.[2] In return, the large coal operators had allegedly agreed to increase wages as productivity increased through mechanization. Phillips alleged that the ultimate effect of this agreement would be to eliminate the marginal competitor from the industry due to the inability of the smaller, non-mechanized operators to meet the union wage demands.

The district court denied the union's motion to dismiss the cross-

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1 26 Stat. 209 (1890), 15 U.S.C. §§ 1-7 (1964). Sections 1 and 2 are as follows:

§ 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. . . .

§ 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

2 The two remaining bases for the conspiracy charge were: (1) it was contended that the large coal companies had agreed not to lease coal lands to non-union coal operators and had agreed to jointly approach the Secretary of Labor to obtain a minimum wage for employees of operators selling coal to the TVA; (2) it was alleged that the large coal companies, two of which had extensive union-held interests, had agreed to cut prices on sale of coal to the TVA, thereby forcing the smaller coal companies to sell at similar rates, which was alleged to be destructive to their operations.

claim and the jury returned a verdict for Phillips against the union. The Sixth Circuit Court of Appeals affirmed[3] and the Supreme Court granted certiorari in order to decide the question: is a union, under the circumstances of this case, exempt from antitrust liability? The Supreme Court held that, if proved, the alleged conspiracy between the union and a multi-employer bargaining unit to impose a uniform wage agreement on non-bargaining members of the industry was not exempt from antitrust liability.[4] *UMW v. Pennington*, 381 U.S. 657 (1965).

A similar question dealing with labor's exemption from antitrust liability was raised in *Local 189, Amalgamated Meat Cutters v. Jewel Tea Co.*,[5] a companion case to *Pennington*. In *Jewel Tea*, representatives of affiliated butchers' unions met with Associated, an organization representing meat and grocery retailers, including Jewel Tea Company, in order to negotiate an employment contract for union members. Associated requested that the union consent to a relaxation of an existing restriction on market hours, which forbade the sale of fresh meat before 9 a.m. and after 6 p.m. in both service and self-service markets.[6] The union affiliates refused to accede to the request and Associated, with the exception of Jewel Tea and National Tea Company, signed a contract containing the same restriction. Owing to strike threats by the union, Jewel Tea later signed the contract.

Shortly thereafter, Jewel Tea brought a suit under the Sherman Act to invalidate the marketing hours restriction, alleging that the unions and Associated had conspired to prevent Jewel from utilizing night self-service sales as a means of competition. The union contended that night marketing hours, even for self-service markets like Jewel Tea's, were a legitimate union interest because they involved conditions of employment of its members.

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[3] 325 F.2d 804 (1964).

[4] The Court reversed and remanded the decision due to the district court's failure to properly instruct on the issue of admissibility of evidence. In Eastern R.R. Presidents Conf. v. Noeer Motor Freight Inc., 365 U.S. 127 (1961), evidence of competitors seeking to obtain favorable legislation through means designed to influence a public official was not sufficient to allow a finding of conspiracy. UMW v. Pennington, 381 U.S. 657, 669 (1965).

[5] 381 U.S. 676 (1965).

[6] The restriction in controversy stated:

> Market operating hours shall be 9:00 a.m. to 6:00 p.m. Monday through Saturday, inclusive. No customer shall be served who comes into the market before or after the hours set forth above.

Id. at 679-80.

After trial, the district court held that: (1) there was no evidence to support a finding of conspiracy; (2) the unions had imposed the marketing hours restriction to serve their own interest respecting conditions of employment which was within the labor exemption of the Sherman Act; (3) or, alternatively, that the restraint of trade, if any, was reasonable.[7] The Seventh Circuit Court of Appeals reversed, holding that the restriction respecting marketing hours was not a condition of employment, and therefore the contractual provision agreed to by the unions and Associated was itself sufficient to demonstrate a conspiracy in restraint of trade.[8] The Supreme Court granted certiorari to answer the question: was the marketing hours restriction, obtained through arms-length bargaining and not at the request or in combination with non-labor groups, a legitimate union interest and therefore exempt from the Sherman Act? The Supreme Court held that a union-employer agreement on when, as well as how long, employees must work is an immediate and direct concern of the union and such an agreement is exempt from the Sherman Act and may be imposed unilaterally by the union upon other employers in the industry. *Local 189, Amalgamated Meat Cutters v. Jewel Tea Co.*, 381 U.S. 676 (1965).

The federal courts initially interpreted the Sherman Act to include union activities within the scope of its provisions.[9] The first Supreme Court decision applying the Act to union activities was *Loewe v. Lawlor.*[10] In the *Loewe* case, decided in 1908, a union's attempt to organize the plaintiff's plant by means of a nationwide boycotting of his goods and prevention of their sale in other states was held to be a "combination in restraint of trade" within the meaning of the Sherman Act.

Congress reacted to this judicial interpretation by enacting the Clayton Act, which was intended to relieve union activities from antitrust sanctions.[11] However, the Supreme Court in 1921 narrowly

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7 215 F. Supp. 839 (1963).

8 331 F.2d 547 (1964).

9 Early decisions applying the Sherman Act to unions are United States v. Workingmen's Amalgamated Council, 54 Fed. 994 (C.C.E.D. La. 1893), *aff'd*, 57 Fed. 85 (5th Cir. 1893), and United States v. Debs, 64 Fed. 724 (C.C.N.D. Ill. 1894), *aff'd*, 158 U.S. 564 (1895).

10 208 U.S. 274 (1908).

11 Section 6, 38 Stat. 731 (1914), 15 U.S.C. § 17 (1964); and section 20, 38 Stat. 738 (1914), 29 U.S.C. § 52 (1964), are the relevant sections:

> § 6. The labor of a human being is not a commodity or article of commerce .... nor shall [labor] organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws.

construed the provisions of the Clayton Act in *Duplex Printing Press Co. v. Deering*.[12] In that case, which involved a factual situation similar to that in *Loewe*, members of New York City machinists' unions combined to boycott the sale of a Michigan manufacturer's non-union made presses. The Court construed section 6 of the Clayton Act to exempt labor unions only when they pursued the normal and legitimate objects enumerated in section 20 and did not allow them to conspire to unlawfully restrain trade by means of a secondary boycott. Furthermore, section 20 was construed to exempt only those union activities directed against the union employees' own employers, so the Court was therefore authorized to issue an injunction.

Reactions to *Duplex* and subsequent cases[13] restricting the Clayton Act were the Norris-LaGuardia Act[14] of 1932, which restored the

§ 20. No restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment . . . . And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; . . . nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States.

12 254 U.S. 443 (1921).

13 See Bedford Cut Stone v. Journeymen Stonecutters Ass'n, 274 U.S. 37 (1927); Coronado Coal Co. v. UMW, 268 U.S. 295 (1925); UMW v. Coronado Coal Co., 259 U.S. 344 (1922); Alco-Zander Co. v. Amalgamated Clothing Workers of America, 35 F.2d 203 (E.D. Pa. 1929); United States v. Railroad Employees' Dept. of A.F.L., 283 Fed. 479 (N.D. Ill. 1922).

14 47 Stat. 70 (1932), 29 U.S.C. §§ 101-15 (1964). Sections 4 and 13 are pertinent:

§ 4. Enumeration of specific acts not subject to restraining orders or injunctions.

No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts: (a) Ceasing or refusing to perform any work or to remain in any relation of employment; (b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in § 103 of this title; (c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value; (d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State; (e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence; (f) Assembling peaceably to act or to organize to act in promotion of their interest in a labor dispute; (g) Advising or notifying any person of an intention to do any of the acts heretofore specified; (h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and (i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore

broad exemptions provided by the Clayton Act, and the Wagner Act[15] of 1935, which narrowed the scope of the judiciary's power to enjoin union activities by placing primary jurisdiction over labor disputes in the National Labor Relations Board.[16]

In *Apex Hosiery Co. v. Leader*,[17] the Supreme Court held that a sit-down strike, accompanied by violence which damaged the plaintiff's plant and prevented him from shipping his goods in interstate commerce, was not a violation of the Sherman Act. The Court noted that the Sherman Act was aimed at "restraint[s] upon commercial competition in the marketing of goods or services,"[18] but distinguished between restrictions placed by a labor union on the labor market as opposed to price or market competition and stated:

> Since, in order to render a labor combination effective it must eliminate the competition from non-union made goods, . . . an elimination of price competition based on differences in labor standards is the objective of any national labor organization. But this effect on competition has not been considered to be the kind of curtailment of price competition prohibited by the Sherman Act . . . .[19]

Under the *Apex* facts, it was plain that the union "did not have as its purpose restraint upon competition in the market for petitioner's product. Its object was to compel petitioner to accede to the union demands [for organization] . . . ."[20]

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specified, regardless of any such undertaking or promise as is described in section 103 of this title.

§ 13 (c) The term "labor dispute" includes any controversy concerning terms and conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

See GREGORY, LABOR AND THE LAW, 187 (2d rev. ed. 1958).

15 49 Stat. 449 (1935), as amended by 61 Stat. 136 (1947), 29 U.S.C. § 151-68 (1964).

16 49 Stat. 451 (1935), as amended by 61 Stat. 139 (1947), 29 U.S.C. § 153 (1964). Although the question of primary jurisdiction was raised in *Jewel Tea*, the Court held that the facts of the case were not proper for application of the doctrine. The Court reasoned that it was not without experience in classifying bargaining subjects and was better equipped than the Board to determine the legal issues involved in *Jewel Tea*. The Court pointed out that the function of the Board is to resolve disputes arising out of refusals to bargain, a situation quite contrary to that in *Jewel Tea*, where the parties did bargain and did in fact agree. The Court then concluded that a prior determination by the Board, necessarily entailing expense and delay, would be of subsidiary importance at best, for the Court would still be called upon to decide the controlling issues of the case. 381 U.S. at 686-87.

17 310 U.S. 469 (1940).

18 *Id.* at 495.

19 *Id.* at 503-04.

20 *Id.* at 501.

The following year, *United States v. Hutcheson*[21] became the first Supreme Court case to construe the provisions of the Norris-LaGuardia Act. The case arose from a jurisdictional dispute between a carpenters' union and a machinists' union over the right of the machinists to perform certain construction work for a large brewer. The carpenters' union engaged in picketing and a consumer boycott against the brewer and refused to allow its members to engage in work for construction firms who were under contract to the brewer. Mr. Justice Frankfurter promulgated the "interlacing statutes"[22] doctrine in a landmark decision declaring that the question of whether or not a union violated the Sherman Act could be answered only when section 20 of the Clayton Act and section 4 of the Norris-LaGuardia Act were read together as a "harmonizing text."[23] Thus, since the facts stated in the indictment brought against the union by the United States came within the conduct enumerated in section 20 of the Clayton Act, they could not constitute a crime within the meaning of the Sherman Act "because of the explicit command of that Section that such conduct shall not be 'considered or held to be violations of any law of the United States.' "[24] The Court went on to state:

> So long as a union acts in its self-interest and does not combine with non-labor groups, . . . the licit and the illicit under section 20 are not to be distinguished by any judgment regarding the wisdom or unwisdom, the rightness or wrongness, the selfishness or unselfishness of the end of which the particular union activities are the means.[25]

As a result of this statement by the Court, *Hutcheson* is generally regarded as holding that any restraint of trade imposed by a labor union acting alone and in its own economic self-interest is exempt from the provisions of the Sherman Act.[26]

A significant refinement of the *Hutcheson* doctrine was formu-

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21 312 U.S. 219 (1941).

22 Frank, *The Myth of the Conflict Between Antitrust Law and Labor Law in the Application of Antitrust Law to Union Activity*, 69 DICK. L. REV. 1, 12 (1964).

23 312 U.S. at 231.

24 *Id.* at 232.

25 *Ibid.* The *Hutcheson* Court cited United States v. Brims, 272 U.S. 549 (1926). In *Brims*, manufacturers of mill work combined with the union carpenters and mill work contractors to reduce competition of out-of-state manufacturers. The union's interest in wage increase was achieved, but the direct effect was a restraint of interstate trade.

26 KIRSH, AUTOMATION AND COLLECTIVE BARGAINING 58 (1964); ATT'Y GEN. NAT'L COMM. ANTITRUST REP. 293 (1955); Steffen, *Labor Activities in Restraint of Trade: The Hutcheson Case*, 36 ILL. L. REV. 1 (1941).

lated in *Allen Bradley Co. v. Local 3, IBEW*.[27] The Court held that where a union combined with a non-labor group via a collective bargaining agreement among unions, employer-contractors, and electrical equipment manufacturers to exclude the use or purchase of all electrical goods produced outside the New York City area, the bargaining agreement had gone beyond the limits of legitimate collective bargaining. The Court focused on the attempt by the employer and manufacturer groups to shield themselves from prosecution under the Sherman Act by enlisting the aid of the unions. The holding stated that the purpose of the labor exemption could not be construed to bestow "upon such unions complete and unreviewable authority to aid business groups to frustrate [the Sherman Act's] primary objective,"[28] that of preserving competition and preventing restraints on trade. The Court in *Allen Bradley* followed the reasoning in *Hutcheson* when it stated:

> So far as the union might have achieved this result acting alone, it would have been the natural consequence of labor union activities exempted by the Clayton Act from the coverage of the Sherman Act. . . . But when unions participated with a combination of business men who had complete power to eliminate all competition among themselves and to prevent all competition from others, a situation was created not included within the exemptions of the Clayton and Norris-LaGuardia Acts.[29]

Thus, the underlying rationale of *Allen Bradley* is that only when a union combines or has agreed with a non-labor group to achieve something proscribed by the Sherman Act will the labor exemption from antitrust liability be lost.

The opinion of the Court in *Pennington* utilizes the same rationale by stating: "One group of employers may not conspire to eliminate competitors from the industry and the union is liable with the employers if it becomes a party to the conspiracy."[30] The union contended that the rationale of *Allen Bradley* was not applicable to *Pennington* because *Allen Bradley* involved an illegal agreement

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[27] 325 U.S. 797 (1945). For relevant discussions in this area see Bernhardt, *The Allen Bradley Doctrine: An Accommodation of Conflicting Policies*, 110 U. PA. L. REV. 1094 (1962); Cox, *Labor and the Antitrust Laws—A Preliminary Analysis*, 104 U. PA. L. REV. 252 (1955); Frank, *supra* note 19; Sovern, *Some Ruminations on Labor, the Antitrust Laws and Allen Bradley*, 13 LAB. L.J. 957 (1962); Winter, *Collective Bargaining and Competition: The Application of Antitrust Standards to Union Activities*, 73 YALE L.J. 14 (1963); Comment, 19 RUTGERS L. REV. 373 (1965).

[28] Allen Bradley Co. v. Local 3 IBEW, *supra* note 27, at 810.

[29] *Id.* at 809.

[30] 381 U.S. at 665-66.

relating to price and market control while *Pennington* involved a wage agreement which is a mandatory subject of collective bargaining. In refuting this argument, the *Pennington* Court stated that "there are limits to what a union or an employer may offer in the name of wages, and because they must bargain does not mean that the agreement reached may disregard other laws."[31]

The Court in reversing *Pennington* did not intimate whether the evidence was sufficient to prove a conspiracy between UMW and the large coal operators.[32] Therefore, the question remains open as to the quantum of evidence necessary to establish a conspiracy. The Court did indicate, however, that a conspiracy could be established by "direct or indirect"[33] evidence.

Mr. Justice Goldberg dissented from the opinion in *Pennington* but concurred in reversal. The premise for the dissent by Mr. Justice Goldberg lies in his belief that the majority has refused to recognize the congressional intent of non-judicial intervention in collective bargaining which he derives from a synthesis of all pertinent legislation.[34] Mr. Justice Goldberg stated:

> To hold that mandatory collective bargaining is completely protected would effectuate the congressional policies of encouraging free collective bargaining, subject only to specific restrictions contained in the labor laws, and of limiting judicial intervention in labor matters via the antitrust route. . . .[35]

The dissent was further concerned with the quantum of evidence necessary to prove a conspiracy from a collective bargaining situation. Since the opinion of the Court did not require direct evidence of an express agreement, Mr. Justice Goldberg feared that the existence of a conspiracy could be inferred from the normal legitimate conduct of the parties. Such a course, Mr. Justice Goldberg postulated, would inevitably cause the judge or jury to try to determine the purpose and motive of the union and employer collective bargaining activities, an approach which was condemned in prior cases and legislative enactments.[36] By permitting a jury to infer an agree-

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31 *Id.* at 665.

32 *Ibid.* "There must be additional direct or indirect evidence of the conspiracy. There was, of course, other evidence in this case, but we indicate no opinion as to its sufficiency."

33 *Ibid.*

34 381 U.S. at 709.

35 *Id.* at 710.

36 *Id.* at 718-19. Mr. Justice Goldberg stated that: "Congress in the Norris-LaGuardia Act and other labor statutes, as this Court recognized in Apex and Hutcheson, determined that judicial notions of the social and economic desirability of union action

ment or conspiracy based on the conduct of the parties, the judiciary would be vesting twelve men with the awesome power of determining whether or not the union's expressed endeavors to achieve high wages exceeded the limits of fairness by calling on their personal opinion as to what the national labor-wage policy should entail.[37]

In *Jewel Tea*, the opinion of the Court was limited to the "narrow factual question: are night operations without butchers, and without infringement of butchers' interests, feasible?"[38] The union evidence offered in the district court and left undisturbed by the court of appeals[39] bore out the union's contention that night operations in self-service markets such as those owned by Jewel Tea were not possible without some detrimental effect on union interests.[40] The Supreme Court held that the findings were not erroneous.[41]

Although Mr. Justice Goldberg concurred in reversing *Jewel Tea*, he nevertheless declared that the case also represented a "reluctance of judges to give full effect to congressional purpose in this area and the substitution by judges of their views for those of Congress as to how free collective bargaining should operate."[42] According to Mr. Justice Goldberg, if the self-service operations were allowed to make night sales, the smaller service stores would likewise need to compete at night, necessarily entailing night work for the union butchers. The opinion further reflects the feeling that the direct interest of the union in enabling its members not to have to work undesirable hours in *Jewel Tea* was a far cry from the indirect interests of the union in *Allen Bradley*.[43]

In *Pennington* and *Jewel Tea*, the Supreme Court was faced with the conflict which the *Allen Bradley* Court explicitly recognized two decades ago:

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should not govern antitrust liability in the area of collective bargaining. The fact that a purpose-motive approach necessarily opens the door to basing criminal or civil penalties under the Sherman Act on just such a determination and to making courts the arbiters of our national labor policy is borne out not only by the history of the cases like Alco-Zander but also by the cases decided today."

37 *Id.* at 720.

38 *Id.* at 694.

39 *Ibid.*

40 *Id.* at 694-95.

41 *Id.* at 737. Mr. Justice Douglas, joined by Mr. Justice Black and Mr. Justice Clark, dissented in *Jewel Tea*. The dissent believed that marketing hours were a proprietary interest rather than a legitimate union interest and were of the opinion that the agreement itself should have been considered as prima facie evidence of the alleged conspiracy.

42 *Id.* at 726.

43 *Id.* at 727-28.

> [W]e have two declared congressional policies which it is our responsibility to try to reconcile. The one seeks to preserve a competitive business economy; the other to preserve the rights of labor to organize to better its conditions through the agency of collective bargaining. We must determine here how far Congress intended activities under one of these policies to neutralize the results envisioned by the other.[44]

These two decisions offer no new, definitive solution to this conflict and due to the steadily increasing demands of labor unions for freedom of action in their pursuit of improved conditions, it is reasonable to assume that future collective bargaining agreements will give rise to increased litigation between labor and business. If *Pennington* and *Jewel Tea* are to be the precedent for future decisions in antitrust actions, at least two decisive principles may be noted at this juncture. First, the law will remain firm that labor agreements which involve terms and conditions of employment will be lawful when there is no showing that the union has ceased to act unilaterally or that it has further agreed with employers to impose terms of the agreement on others outside the bargaining unit. Second, there will be a continued reliance on the provisions of the Norris-LaGuardia Act to prevent the issuance of injunctions against union activity when it is seeking a legitimate union goal.[45]

The areas of uncertainty that *Pennington* and *Jewel Tea* leave in their wake are the boundaries of labor's exemption and the question of how much evidence will be required to find a conspiracy in restraint of trade from a union-employer collective bargaining agreement.

The Court stated that although the union may be seeking a particular goal involving a mandatory subject of collective bargaining, it will not be "automatically exempt."[46] The allowable inference from this declaration is that the Court will continue to utilize the "purpose-motive"[47] approach to determine the legality of an agreement. In Mr. Justice White's words, the exemption can only be ascertained through a "weighing [of] the respective interests in-

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[44] 325 U.S. at 806.

[45] Address by Robert J. Hoerner, "The Supreme Court and the Labor Exemption," Antitrust Section A.B.A. Convention, Aug. 10, 1965.

[46] 381 U.S. at 664.

[47] *Id.* at 718. Mr. Justice Goldberg contended in his dissent to *Pennington* that it has been the policy of the Court to eschew from such a course in antitrust litigation. It is questionable whether the "purpose-motive" test has been the consistent test applied by the Court. *Compare* United States v. Hutcheson, 312 U.S. 219 (1941) *with* Coronado Coal Co. v. UMW, 268 U.S. 295 (1925).

volved. . . ."[48] The Court, then, must necessarily balance two factors, "the concern of union members"[49] and "the effect on competition."[50]

Mr. Justice Douglas, concurring with the majority opinion in *Pennington*, stated that an "industry-wide agreement containing [*Pennington*] features is prima-facie evidence of a violation."[51] It is inescapable that union-employer negotiations entail a discussion of respective demands and interests. Will the fact that a multi-employer, industry-wide agreement is reached be cause for arousing suspicion?[52] In view of the fact that areas of antitrust applicability to union activity are still unsettled, it would be an obvious prediction that the Court will be called on in the near future to refine its decisions in *Pennington* and *Jewel Tea.*

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48 381 U.S. at 691.
49 *Ibid.*
50 *Ibid.*
51 *Id.* at 673.
52 It is a generally recognized rule that a conspiracy need not be proven by direct evidence; circumstantial evidence will suffice. *E.g.*, American Tobacco Co. v. United States, 328 U.S. 781 (1946); Interstate Circuit, Inc. v. United States, 306 U.S. 208 (1939).