

Antitrust Advisory: Unions' Exemption from Antitrust Laws is Not Made of Steel

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On August 1, 2008, the U.S. Court of Appeals for the First Circuit reversed and remanded the district court's grant of summary judgment for defendant, a local labor union, on Plaintiff's federal antitrust claims in *American Steel Erectors, Inc. v. Local Union No. 7* (Docket No. 07-1832 (1st Cir. Aug. 1, 2008)). The First Circuit held that the defendant Union's job targeting program, as codified by and operated through certain agreements with employers, is not exempt from potential federal antitrust liability.

Why This Case Is Important

In an effort to balance the conflicting interests of antitrust policy, which strives to promote competition in the market place, and labor policy, which facilitates cooperation among workers, Congress and the Supreme Court have created certain statutory and nonstatutory exemptions from antitrust liability for labor groups. Despite these exemptions, Plaintiffs in this case alleged "a conspiracy between the Union and union employers to monopolize the structural steel industry in the Boston area and push non-union employers like Plaintiffs out of the market." Relying on the statutory exemptions, the district court granted the Union's motion for summary judgment, holding that the Union's activities were exempt from antitrust liability. The First Circuit, however, disagreed. The First Circuit's decision makes clear that, despite these exemptions, unions are not given carte blanche to engage in anticompetitive activities, especially when acting in concert with non-labor groups.

Background

Five non-union New England-based steel erectors ("Plaintiffs") brought suit against an iron workers union (the "Union") alleging that the Union conspired with certain union contractors to shut non-union contractors out of the structural steel industry in the Boston area.

In the Boston area structural steel industry, competition for steel erection contracts is intense, with the lowest bidder usually winning the contract. Under a collective bargaining agreement (the "CBA") entered into between the Union and certain contractors ("Union Contractors"), workers must be paid a negotiated union wage which is often higher than wages paid by non-union contractors such as Plaintiffs. Since labor expenditures account for about half of the cost of steel erection work, non-union steel erectors who are not bound by the CBA's wages can often submit lower bids for steel erection contracts. To mitigate the disadvantage created by union wages, the Union implemented the Market Recovery Program ("MRP") which targets certain construction projects and offers a subsidy to Union Contractors bidding on the project. The purpose of the subsidy is to offset the higher cost of union labor which then enables Union Contractors to compete against non-union contractors. The subsidies are financed through wage deductions that are paid by the Union Contractors directly to the Union, which then deposits them into a fund (the "Fund").

Plaintiffs claimed that the Union subsidized Union Contractors in underbidding Plaintiffs for steel erection contracts, resulting in Plaintiffs being largely excluded from the structural steel industry market in the Boston area. Among other charges, Plaintiffs alleged violations of Sections 1 and 2 of the Sherman Act, which prohibit contracts, combinations or conspiracies in restraint of trade or commerce and monopolies or attempts to monopolize. The Union asserted that it is exempt from antitrust liability under the Clayton Act and the Norris-LaGuardia Act, which provide statutory immunity to certain organized labor conduct.

The district court granted the Union's motion for summary judgment on the federal antitrust claims, finding that the conduct of the Union in administering the MRP was sheltered from antitrust liability by the statutory labor exemption.

The First Circuit's Decision

On appeal, the First Circuit reversed and remanded.

In *H.A. Artists & Assoc., Inc. v. Actors' Equity Ass'n*, the Supreme Court recognized the "inherent tension between national antitrust policy, which seeks to maximize competition, and national labor policy, which encourages cooperation among workers to improve the conditions of employment." To articulate the statutory exemptions from antitrust liability found in both federal antitrust and labor statutes, the Supreme Court created a two-pronged test in *United States v. Hutcheson*, holding that union activity is exempt "so long as [the] union acts in its self-interest and does not combine with non-labor groups" (the "Hutcheson Test"). The Supreme Court further recognized in *Connell Constr. Co., Inc. v. Plumbers & Steamfitters Local Union No. 100* that "a proper accommodation between the congressional policy favoring collective bargaining under the [National Labor Relations Act] and the congressional policy favoring free competition in business markets requires that some union-employer agreements be accorded a limited nonstatutory exemption from antitrust sanctions."

Here, the First Circuit initially focused on whether the MRP constitutes a "combination" between the Union and the Union Contractors under the two-pronged Hutcheson Test. The First Circuit found that the MRP represents a combination between the Union (a "labor group") and the Union Contractors (a "non-labor group"), noting that the method and amount of wage deductions to finance the Fund are codified in the CBA and other agreements between the Union and the Union Contractors. Accordingly, the First Circuit held that the MRP fails the Hutcheson Test, and thus the statutory exemption from antitrust liability does not apply.

Next, the First Circuit addressed whether the nonstatutory exemption from antitrust liability might apply. The First Circuit noted that "the case for the applicability of the nonstatutory exemption is strongest where the alleged restraint operates primarily in the labor market and has only tangential effects on the business market." In this case, Plaintiffs had alleged "concerted union-employer action that extended beyond merely the wage deduction provided for in the CBA and the job-by-job subsidy agreements, to collaboration in the identification and acquisition of target projects." As the district court had not addressed the applicability of the nonstatutory exemption from antitrust liability, the First Circuit found sufficient disputed issues of material fact to render summary judgment on the issue inappropriate.

The case is not over, and the Union could still win on the nonstatutory exemption. The First Circuit remanded for further fact-finding on the extent of collaboration between the Union, Union Contractors, and the construction companies to determine whether the nonstatutory exemption from antitrust liability applies.

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