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Labor Law—Antitrust Law—Exemption of Labor Union from Sherman Act. American Fed'n of Musicians v. Carroll

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CASE NOTES

Labor Law—Antitrust Law—Exemption of Labor Union from Sherman Act.—***American Fed'n of Musicians v. Carroll.***[1]—The plaintiff orchestra leaders brought this action against the American Federation of Musicians (AFM) for alleged violations of Sections 1 and 2 of the Sherman Antitrust Act.[2] The plaintiffs contended that certain practices of the AFM affecting orchestra leaders on "club-dates" violated the Sherman Act by constituting a conspiracy with a "nonlabor group" to violate the antitrust laws. "Club-dates" are one-time engagements of orchestras to provide music, usually for only a few hours at such events as wedding receptions and commencements. On "club-dates" the orchestra leader secures the engagement, either by himself or through booking agents, and negotiates directly with the music purchaser, usually for a flat fee. He is responsible for collecting the fee, paying the sidemen, withholding taxes and keeping records.[3] In the "club-date" single engagement field there are no collective bargaining agreements. Single engagements are rigidly regulated by unilaterally-adopted union bylaws and regulations. The AFM had acquired a virtual closed shop in the New York City area by means of agreements with hotels, booking agents and record companies. Thus, the union's bylaws regulated substantially all the musicians' employment. The bylaw principally challenged by the plaintiffs as violative of the antitrust laws was one requiring each member orchestra leader to follow a "Price List Booklet" which imposed minimum price scales for orchestra leaders to charge. The bylaws also required each leader to employ a minimum number of sidemen for club-date engagements and to use a union-drawn standard contract. The four orchestra leaders in this case were fulltime leader-employers. They maintained offices and employed personnel to solicit engagements through advertising and personal contact. They had regular groups of musician-employees from which they selected the number necessary for each engagement. The plaintiff-leaders all had established businesses with their own clienteles and reputations. The plaintiff-leaders charged that the union's involvement of the orchestra leaders—who were held by the court of appeals to be employers and independent contractors in the club-date field[4]—in the promulgation and enforcement of the challenged regulations and bylaws created a combination with a "nonlabor" group which violated the Sherman Act.[5] The district court dismissed the action on the merits, stating that the activities of the union were exempt from the antitrust laws as activities affecting a "labor group" which is party to a "labor dispute" under the Norris-La Guardia Act.[6] The Court of Appeals for the Second

1 391 U.S. 99 (1968).

2 15 U.S.C. §§ 1, 2 (1964).

3 Carroll v. American Fed'n of Musicians, 372 F.2d 155, 159 (2d Cir. 1967).

4 Id.

5 Allen Bradley Co. v. Local 3, Elec. Workers, 325 U.S. 797 (1945), established the rule that a union would be denied exemption from the antitrust laws if it combined with a nonlabor group to achieve a commercial restraint.

6 Carroll v. American Fed'n of Musicians, 241 F. Supp. 865, 894 (1965).

Circuit reversed on the issue of price fixing but in all other respects affirmed the dismissal.[7]

The Supreme Court, Justices White and Black dissenting, vacated the decision of the court of appeals, and affirmed the district court decision. HELD: Where the work and functions of the orchestra leaders actually or potentially affect the hours, wages or job security of members of musicians' unions, union practices affecting leaders do not violate the Sherman Act since they are exempted by the Norris-LaGuardia Act as activities affecting a "labor group" which is party to a "labor dispute."[8]

This case represents the latest in a recent series of Supreme Court efforts[9] to balance the conflicting policies between the national labor policy and the antitrust laws. *Carroll* first presents the issue whether the orchestra leaders constitute a "labor group." The second major issue is whether a union, even if not in conspiracy with a nonlabor group, may unilaterally impose price scales without being subject to the antitrust laws. This issue involves the extent to which a union may use its exemption from the antitrust laws to engage in practices, such as price fixing, that would be clear antitrust violations if practiced by a nonlabor group. The final issue treated in this note deals with what connections between a union and a nonlabor group are necessary to constitute a combination in restraint of trade.

The definition of a labor group. The Supreme Court based its holding partly on the finding of the district court that, although the orchestra leaders are deemed employers and independent contractors, they constitute a labor group.[10] The reasoning leading to this conclusion deserves analysis. The Court agreed with the district court that the criterion to be used in determining whether the orchestra leaders were a labor group was the "presence of a job or wage competition or some other economic interrelationship affecting legitimate union interests between the union members and the independent contractors."[11] If such a relationship existed, the independent contractors were a labor group and party to a labor dispute under the Norris-LaGuardia Act. The Norris-LaGuardia Act exempts all labor disputes involving terms or conditions of employment from the reach of the Sherman Act and establishes that the allowable area of union activity is not to be restricted to an immediate employer-employee relationship.[12] The Court agreed with the determination of the district court that because the leaders performed work and functions which competed with the interests of the union's members they

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[7] 372 F.2d at 168.

[8] 391 U.S. at 105-14.

[9] See, e.g., United Mine Workers v. Pennington, 381 U.S. 657 (1965); and Local 189, Meat Cutters v. Jewel Tea Co., 381 U.S. 676 (1965).

[10] 391 U.S. at 105; see 241 F. Supp. at 887-88.

[11] 241 F. Supp. at 887.

[12] The term "labor dispute" includes any controversy concerning terms or 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.

Norris-LaGuardia Act § 13, 29 U.S.C. § 113(c) (1964).

were a labor group.[13] The Court stated that every time a full-time leader secures an engagement he "displaces" a union member who may be bidding for the same job.[14]

The Court joined the plaintiffs, who are full-time orchestra leaders and employers, into a "group" with any other musicians who may perform only occasionally as leaders. This analysis ignores the functions of the plaintiffs as businessmen and entrepreneurs. Because the full-time leader performs many functions not performed by the union member who occasionally leads, there is no real, direct competition between the two. The full-time leader as a manager and employer provides jobs for union members; he does not "displace" them. In a case where the leader does not personally lead, but solicits an engagement and hires a subleader to lead for him, he performs no so-called labor group work. The leader's function is solely that of entrepreneur. Through his reputation as an established provider of music, he acquires a customer, makes the necessary arrangements for servicing the customer, including employment and supervision of staff, and maintains the administrative structure required for this work, *i.e.*, office, payroll clerk and permanent telephone listing. As the dissent points out, "Managing and administering a business whose function is supplying bands to fathers of brides is not 'labor group work.' "[15]

Even where the full-time leader performs with his orchestra, he must perform in the unique manner required for leading and not in the manner of any union member employee. Even though the dissent concedes that the musical aspects of leading are "labor group" work, the conclusion is arguable. It could be viewed as supervisory work so that when a leader, who actually conducts, "displaces" a union member who would lead if the leader did not, he displaces him only in a supervisory capacity, even if he plays an instrument as well.

The purpose of the National Labor Relations Act is to foster the peaceful operation of labor relations through the procedure of collective bargaining.[16] To bargain collectively there must be two sides, the employer and the employees, with distinct rights and obligations. Therefore, the NLRA specifically defines employers, supervisors and independent contractors in order to maintain the status of these groups distinct from that of the employees.[17] The preservation of the two parties necessary for collective bargaining requires that the employee not be forced into the union which organized his employees. The orchestra-leader employers' clear status as employers and a nonlabor group should not be changed by the labelling of part of their functions as labor group work.

The major precedent cited by the Court[18] in support of the proposition

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[13] 391 U.S. at 105-06; see 241 F. Supp. at 887-88.

[14] 391 U.S. at 111 n.11.

[15] Id. at 115 (dissenting opinion).

[16] "It is declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce . . . by encouraging the practice and procedure of collective bargaining . . . ." National Labor Relations Act [hereinafter cited as NLRA] § 1, 29 U.S.C. § 151 (1964).

[17] 29 U.S.C. §§ 152(2), (11) (1964).

[18] 391 U.S. at 107.

that the union may pressure the orchestra leaders to become union members did not deal with employers who perform many functions which their employees do not perform. *Local 753, Milk Wagon Drivers v. Lake Valley Farm Prods., Inc.*[19] dealt with pressure to unionize independent delivery drivers who performed exactly the same functions as the union's employees. They performed no employer functions, as the orchestra leaders did in *Carroll. Lake Valley* dealt with the special evils of a system of contracting out to independent drivers which cut into the business of union employers and affected unfavorably the wages and employment of union members.[20] Even in an area such as the recording industry, where the purchaser of the music is the actual employer,[21] the orchestra leader is still a "supervisor" as defined by the NLRA as one who has authority in the interest of the employer to hire and lay off employees.[22] As stated before, the NLRA specifically defines supervisors separately from employees.

The Court's designation of employers as a "labor group" because they perform some "labor group work" could lead to rather questionable results if it were to be applied to any industry other than the unique music business. The Court has little justification for dividing an employer's functions into labor group work and nonlabor group work. This analysis might allow a union or court to decide that, because any employer performs some routine functions which his employees could handle, he can be pressured into the same union with his employees. The mere fact that the owner of a small store sometimes works at the counter should not give the clerk's union a right to force him into the same union with his employees. The Court cites no precedent for its conclusion that employers may constitute a labor group because they perform some functions their employees could perform. The anomalous position of employers as a labor group demeans the integrity of their status. It seems now that orchestra leaders, to be classified as a nonlabor group, must deprive themselves of some part of their own job if it is something which a union employee could perform. An orchestra leader should have the right to follow his chosen profession free of coercion by a union in which, as an employer, he has no place to give up part of his functions. The policy of the National Labor Relations Act is to promote the process of collective bargaining.[23] The Court would seem to defeat this goal by denying the plaintiff orchestra leaders their rightful status as employers and by allowing the union unilaterally to impose bylaws and regulations upon them in place of negotiation through collective bargaining.

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19 311 U.S. 91 (1940).

20 Meat Drivers Union v. United States, 371 U.S. 94 (1962), also cited by the Court in *Carroll* as support for their conclusion that the orchestra leaders were a labor group, actually found that independent drivers, who performed substantially the same work as employee-drivers, were a nonlabor group since the union treated them as a body separate from the rest of the members.

21 In the recording industry a regular employee of the recording company exercises general supervision over the orchestra hired. He selects the orchestra leader, who does the conducting and some arranging, hires the sidemen and determines their number, their instruments and the compositions to be played, and exercises general control over the orchestra's performance. 372 F.2d at 159.

22 29 U.S.C. § 152(11) (1964).

23 NLRA § 1, 29 U.S.C. § 151 (1964), quoted in part at note 16 supra.

The imposition of price scales. The second major issue in *Carroll* was whether the imposition of the Price List Booklet amounted to price fixing in violation of the Sherman Act. Even if the orchestra leaders are considered a labor group there is an additional ground upon which the legality of the union's activities must be tested. If the unions coerced the leaders about a matter which is not a "term or condition of employment," they would not be exempt from the Sherman Act, "because the Norris-LaGuardia Act affords immunity from the impact of anti-trust laws only for 'labor disputes'; it does not provide blanket exemption."[24] The Court agreed with the district court's statement that, "[i]n view of the competition between leaders and sidemen and subleaders which underlies the finding that the leaders are a labor group, the union has a legitimate interest in fixing . . . minimum engagement prices . . . ."[25] The dissent quoted with approval the conclusion of the court of appeals that "the unions' establishment of price floors on orchestral engagements constitutes a per se violation of the Sherman Act."[26] The majority in *Carroll* based its conclusion that the price lists were legal on the argument that a leader is in job and wage competition with the subleaders and sidemen who are union members. This reasoning again fails to give sufficient weight to the status of the plaintiffs as full-time leader-employers, even if they are classified as a labor group.

The Court emphasized a footnote in *Local 189, Meat Cutters v. Jewel Tea Co.*[27] which stated that "the crucial determinant is not the form of the agreement—*e.g.*, prices or wages—but its relative impact on the product market and the interests of union members."[28] The Court found that the price floors actually operated to protect the wages of the subleaders and sidemen. In *Jewel Tea*, the Meat Cutters Union sought to prevent any store in the Chicago area from selling meat except during the hours of 9:00 A.M. to 6:00 P.M. All members of a bargaining association of stores acceded to the union's demand except Jewel Tea Company. The union called a strike against it which finally forced Jewel Tea to acquiesce. The Supreme Court held that the marketing hours restriction was imposed by the unions to serve their own interests respecting conditions of employment, and was therefore within the labor exemption of the Sherman Act. But the Court in *Carroll* ignored the clear, unanimous expression of *Jewel Tea* that there is no antitrust immunity for a union which joins with employers to fix the price at which the employers sell to the public.[29] This prohibition against a union's fixing prices through collective bargaining would certainly seem to forbid a union unilaterally to impose fixed prices on employers.

The Court found additional support for sustaining the validity of the

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[24] 372 F.2d at 164.

[25] 241 F. Supp. at 890.

[26] 372 F.2d at 165.

[27] 381 U.S. 676 (1965).

[28] Id. at 690 n.5.

[29] "In *Meat Cutters v. Jewel Tea Co.*, . . . the entire Court joined opinions strongly suggesting there is no antitrust immunity for a union which joins with employers to fix the prices at which the employers sell to the public." 391 U.S. at 117-18 (dissenting opinion).

price floors in *Local 24, Teamsters v. Oliver*,[30] where the union was permitted to compel, through a collective bargaining agreement, a carrier to pay certain wages to its employees and also to pay a profitable rental to owner-drivers, who were independent contractors performing the same function as union members. The prices received by the owner-drivers were a term or condition of employment of the union members, because "an inadequate rental might mean the progressive curtailment of jobs through the withdrawal of more and more carrier-owned vehicles from service."[31] The Court stated that the Price List in *Carroll* served the same function as the price scales in Article XXXII of the collective bargaining agreement in *Oliver*:

> The Price List has in common with Article XXXII the objective to protect employees' job opportunities and wages from job and wage competition of other union members—in the case of the Article, drivers when they drive their own vehicles, and in the case of the Price List, musicians on the occasion they are leaders and play a role as employers.[32]

The last part of this statement by the Court minimizes the importance of the plaintiffs' position as full-time leader-employers. They do not merely "play a role as employers." The goal of the price scales in *Oliver* was to protect a negotiated wage scale against possible undermining. In *Carroll*, there was no negotiated wage scale to protect, only wage scales unilaterally imposed by the union, which had refused to bargain collectively. Another factor distinguishing the cases is that *Oliver* dealt with independently-contracted employees who performed exactly the same functions as the union's employees. *Carroll* deals with employers who perform many functions that union musicians do not perform.

The Court also found justification for the price lists in the limits of the labor exemption set down by *Jewel Tea*. That case set two standards for a union exemption. First, the union must act in its own self-interest, rather than in combination with nonlabor groups. Secondly, even if the union's activities are unilateral, they must intimately concern a subject relating to matters of "immediate and direct union concern"—wages, hours and working conditions—rather than to matters such as prices which are of only indirect concern to the union. There is no doubt that in *Carroll* the union members had a close concern with the prices which their employer charged. But this concern should not give the union the right to usurp the management prerogative of price determination when it may protect its wage scales through less drastic means. The union certainly has the right to bargain for minimum wages which an employer must pay, but it should not be allowed to enforce such a legitimate goal through means that violate the antitrust laws. The majority in *Carroll* seems to indicate that, as long as unions act unilaterally and as long as their activities affect the wages, hours and working conditions of their men, they may use broad means to achieve this goal. It is hard to

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30 358 U.S. 283 (1959).

31 Id. at 294.

32 391 U.S. at 109-10.

believe that Congress intended the labor exemption to be carried so far. As Justice White stated in dissent:

> [P]rice competition, a significant aid to satisfactory resource allocation and a deterrent to inflation, would be substantially diminished if industry-wide unions were free to dictate uniform prices through agreements with employers. I have always thought that this strong policy outweighed the legitimate union interest in the prices at which employers sell . . . .[33]

In its interpretation of *Jewel Tea*, the *Carroll* Court seems to be moving toward Justice Goldberg's concurring statement in the former case. There he expressed the view that the subjects of mandatory bargaining may extend beyond mere direct job and wage competition and that "collective bargaining activity containing mandatory subjects of bargaining under the Labor Act is not subject to the antitrust laws."[34] Even though the Court states that it expresses no opinion on whether all union activities concerning subjects of mandatory bargaining are exempt from the Sherman Act,[35] it certainly seems to imply such a result. The Court in *Carroll* seems to say that because the union has a direct interest in the prices which their employers charge, it may regulate these prices in a manner violative of the antitrust laws if practiced by a nonlabor group. This rationale neglects the balance of union interest in prices against the strong public policy to promote legitimate price competition.

This public policy suggests that subjects of mandatory bargaining not carry with them an automatic exemption from the antitrust laws. Where wages are a direct percentage of product prices, the union, in order to raise wages, might insist that a group of employers adhere to minimum prices. As *Oliver* held, prices may have a sufficiently direct link with wages to constitute a bargainable item. That fact does not, however, resolve the issue whether the price-fixing agreement violates the Sherman Act. Like other groups, unions are subject to limitations in the methods which they may use in advancing even their most legitimate interests.[36] The Sherman Act contains one such limit. Therefore, the criteria used to establish a union exemption from the antitrust laws cannot be solely "the directness or importance of the employees' interests; they must also reflect the impact of the methods used on competition in the product market."[37] The Court's statement in *Carroll* that the form of the agreement is not relevant, and that the only criterion for determining the question of the price floors is their legitimate relation to the employees' interests, ignores such an impact. The Court fails to mention the unanimous rejection in *Jewel Tea* of union efforts to fix industry-wide prices. Also, as the court of appeals in *Carroll* points out:

> The arguments that musicians are interested in the prices charged by their employers, because they form the boundary of the wages

[33] Id. at 119 (dissenting opinion; footnote omitted).

[34] 381 U.S. at 710 (opinion of Goldberg, J.).

[35] 391 U.S. at 110.

[36] Meltzer, Labor Unions, Collective Bargaining, and the Antitrust Laws, 32 U. Chi. L. Rev. 659, 697-98 (1965).

[37] Id. at 733.

> they can expect to receive is not persuasive because it would justify an invasion of the proper function of management, which, with few exceptions, would go beyond any balancing of the labor and anti-trust laws and effect the complete paralyzation of the latter. [Citation omitted.] The same principle would support union-instigated price-fixing in any industry.[38]

Even if the union has a legitimate interest in protecting the wage scales set for its members, it should not be allowed to use methods which directly restrict price competition when other methods which do not have such an effect are readily available. In *Oliver* there was no other method for the union to protect its members from the destructive competition of the owner-drivers. In *Carroll*, however, the union, through such methods as wage scales and closed shop agreements,[39] could have achieved the same result without restricting legitimate price competition. In addition, the union has no legitimate interest in setting a minimum fee for an employer, who is not a proper subject for union regulation. In balancing the policy of promoting price competition with the legitimate interests of union members, the courts should consider whether the union has other reasonable means to protect its interests without restricting such competition.

In upholding the validity of the price floors, the majority in *Carroll* points up a weak link in the opinions of Justices White and Goldberg in *Jewel Tea*. Neither opinion explained why a marketing-hour restriction should be validated, while price fixing by way of collective bargaining should be denied exemption. The characterization of the former as "directly related" to the employee's interests and the latter as "indirectly related" does not diminish the similar type of restriction which both policies put on competition. As one commentator put the question: "Is price-fixing . . . less directly related to the employees' legitimate interest in more pay and more stable employment than the marketing hour restriction viewed essentially as a means of protecting independents and their employees against the competitive pressure of self-service operations?"[40] Perhaps the majority in *Carroll* has finally recognized that there is no substantial difference. Justice White, who wrote the dissent in *Carroll*, seems to be the victim of his own failure in *Jewel Tea* to explain the difference in anticompetitive effect between market hour restrictions and price fixing.[41]

The nature of a combination. Another question raised by the decision asks what connections between a union and a nonlabor group are necessary

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38 372 F.2d at 165.

39 In United States v. American Fed'n of Musicians, 47 F. Supp. 304 (N.D. Ill. 1942), aff'd per curiam, 318 U.S. 741 (1943), it was held that the union's attempt to "eliminate all musical performances over the radio except those presented in person by members of the American Federation of Musicians," id. at 307, was exempted from the Sherman Act by the Norris-LaGuardia Act. This decision allows the closed shop because, by limiting employment to union members, a union is coercing nonunion workers to join it.

40 Meltzer, supra note 36, at 733.

41 It is also ironic that Justice Douglas, who dissented in *Jewel Tea*, joined in upholding the union's anticompetitive behavior in *Carroll*. Why he would condemn the fixing of uniform store marketing hours in *Jewel Tea*, but allow the fixing of prices in *Carroll*, is not clear.

to constitute a combination in restraint of trade. More specifically, the question is whether the unilateral demands which the union enforced by threats, combined with the willing or reluctant acquiescence of the leaders, can amount to a combination in restraint of trade. The majority, in a footnote,[42] quoted the court of appeals as concluding that there was no evidence of a conspiracy and "that all restraints were instituted unilaterally by the unions and acquiesced in by the orchestra leaders."[43] As Justice White noted in his dissent, it would be hard to believe that the majority is saying that a union's unilateral imposition of demands on a nonlabor group can never amount to a combination in restraint of trade.[44] The courts[45] and the Federal Trade Commission[46] have held that otherwise impermissible arrangements embodied in collective bargaining agreements would not be validated by union instigation and initial employer resistance. Surely then, the unilateral imposition of "otherwise impermissible arrangements" and the forced acquiescence of the employer would also not validate such arrangements. Here, the union does not even have the shield of a collective bargaining agreement behind which to stand. Also, the actual or intended benefits of such arrangements to the employees should not be the sole test of legality since most such anticompetitive devices ultimately benefit the employee. The finding of a combination in restraint of trade should not depend upon who originally instigated the plan.

The courts should not condone plans which violate the antitrust laws simply because they are initiated by a union. The antitrust laws forbid trade restraints forced on employers by unions as well as restraints initiated by the employer and acquiesced in by the union.[47]

Conclusion. The main problem posed by *Carroll* is the extent of its effect. Does it apply only to the special employment conditions of the music industry, or does it, as the orchestra leaders' counsel warns, set a broader precedent giving unions the right under the antitrust laws to fix and enforce, unilaterally, minimum prices for an entire industry, provided that they do so to protect wage scales which they impose without collective bargaining?[48] It is submitted that the effect of the case be limited to the special needs of the music industry because of the very difficult problems raised by general application of the decision to other industries. But the Court does not indicate such an intent to limit the effect of the case. As the dissent points out,

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42 391 U.S. at 105 n.8.

43 372 F.2d at 164.

44 391 U.S. at 120 n.9 (dissenting opinion).

45 See Hawaiian Tuna Packers, Ltd. v. International Longshoreman's Union, 72 F. Supp. 562 (D. Hawaii 1947).

46 California Sportswear & Dress Ass'n, 54 F.T.C. 835, 891 (1957).

47 See United Mine Workers v. Pennington, 381 U.S. 657, 663 (1965):

> If the UMW in this case, in order to protect its wage scale by maintaining employer income, had presented a set of prices at which the mine operators would be required to sell their coal, the union and the employers who happened to agree could not successfully defend this contract provision if it were challenged under the antitrust laws by the United States or by some party injured by the arrangement.

48 Plaintiffs' Petition for Rehearing at 12, American Fed'n of Musicians v. Carroll, 391 U.S. 99, reh. denied, 89 S. Ct. 64 (1968).

at any rate, the Court should leave to Congress the determination whether to make special exceptions to the antitrust laws for the special circumstances of the music industry.[49] The case raises also the question of the extent to which unions and employers may justify their anticompetitive schemes on the ground that they directly benefit the employee union members. *Carroll* has confused the once clear distinctions between an employer and his employees with such concepts as "labor group work" and by division of the employer's functions. The great expansion of "legitimate union interest" by *Carroll* seems unjustified in light of the extensive economic power already possessed by unions such as the AFM. A single union in an industry such as music possesses a great deal of bargaining power because of the diversified nature of the management with which it must deal. The musicians' union "exercises rigid and monolithic control over much of the music industry,"[50] and does not need control of the management prerogative of price setting to protect its interests.

Secondly, *Carroll* seems to defeat the purpose of the NLRA to promote collective bargaining by denying the full-time leaders their appropriate status as employers and by allowing the union unilaterally to impose job conditions without collective bargaining. The whole thrust of both *Oliver* and *Jewel Tea* was that the union has a right to protect its members' interests by restrictions determined through collective bargaining. But neither case suggests that unions may restrain competition by refusal to bargain collectively, by coercion of employers into the union and consequent imposition of anticompetitive conditions through unilaterally adopted bylaws and regulations. As the dissent stated, "The Court treads dangerous ground in seeking on its own motion to deny to a particular industry the normal competitive conditions envisioned by the antitrust laws, conditions usually viewed as essential for maintaining services and prices at satisfactory levels."[51]

DOUGLAS K. MAGARY

Bankruptcy Law—Bankruptcy Act—Section 77—Jurisdiction of Bankruptcy Court Over State's Right of Eminent Domain.—*Commonwealth v. Bartlett.*[1]—The Boston & Providence Railroad had been undergoing reorganization[2] proceedings in the District Court for the District of Massachusetts since 1938. The proceedings were being held pursuant to Section 77 of the Bankruptcy Act,[3] which provides for the reorganization of railroads

[49] 391 U.S. at 121-22 (dissenting opinion).
[50] 372 F.2d at 159.
[51] 391 U.S. at 122 (dissenting opinion).

[1] 384 F.2d 819 (1st Cir. 1967), cert. denied, 390 U.S. 1003 (1968).
[2] A reorganization involves a business plan for winding up the affairs of a bankrupt corporation, in this case a railroad, by selling its property.

> It is usually accomplished by the judicial sale of the corporate property and franchises, and the formation by the purchasers of a new corporation. The property and franchises are thereupon vested in the new corporation and its stock and bonds are divided among such of the parties interested in the old company as are parties to the reorganization plan.

Black's Law Dictionary 1462 (4th ed. 1968).
[3] 11 U.S.C. § 205 (1964).