

LABOR RELATIONS, UNIONS AND COLLECTIVE BARGAINING: A POLITICAL ECONOMIC ANALYSIS

Walter Block
College of the Holy Cross, Amherst

It is not difficult to document the fact that many segments of our society extol the virtues of unionism, as commonly practiced. Some people defend unions as a means of promoting employment. Others feel that "social justice" is a sufficient warrant for this curious institution. So deeply embedded in our folkways is the concept that unions are legitimate institutions that many mainline religious organizations have even gone so far as to invite them to organize their own Church employees – on what they see as moral grounds.

The simple fact is that in the minds of most pundits, unions have a legitimate role to play in our society. How else can we account for the fact that gangs of organized laborers who have engaged in violent strikes not only still remain at large, but are widely applauded for their courage and convictions? Were any other group of people to have interfered with the lives and property of others in a similar manner, they would have been summarily clapped into jail, and been considered proper objects of fear, loathing, ridicule and pity, the reaction elicited in most people by activities criminal.

Complexity

Contrary to the popular notion, however, unionism is a complex phenomenon, which admits of a voluntary and a coercive aspect. The philosophy of free enterprise is fully consistent with voluntary unionism, but is diametrically opposed to coercive unionism. What do all varieties of unionism, both coercive and voluntary, have in common? Unions are associations of employees, organized with the purpose of bargaining with their employer in order to increase their wages.¹

¹Since money wages are funds which the employees take home, and working

What, then, is the distinction between invasive and non-invasive unions? The latter obey the libertarian axiom of non-aggression against non-aggressors; the former do not. Legitimate unions, in other words, limit themselves to means of raising wages which do not violate the rights of others; illegitimate unions do not so inhibit themselves.

Some pundits have declared their "full support for the principle of free and voluntary association in labor unions." If this constitutes moral approval of voluntary unions, and condemnation of the coercive type, well and good. But if it is intended to apply to extant labor organizations, this statement is disingenuous. It is not even a rough approximation of how organized labor has operated – and still continues to operate – in the modern world.

Coercion

Let us be absolutely clear on this distinction, for it is at the root of any accurate assessment of unionism. There are those labor organizations which do all they can to raise their members' wages and working conditions – except violate the (negative) rights of other people by initiating violence against them. These can be properly called "voluntary unions". But then there are those which do all they can to promote their members' welfare both by legitimate non-rights-violative behavior as well as by the use of physical brutality aimed at non-aggressing individuals.

With regard to the activity of "coercive unions" defined in this manner, Ludwig von Mises has stated:

conditions embody funds which are spent, at least in part, in behalf of the employees while on the job, there are really two desiderata here. One, the total of money wages and working conditions, and two, the allocation between them. On the free market, the employer has a great incentive to allocate these two sorts of wage expenditures in accordance with the desires of his employees. If, for example, the workers in his plant prefer most of their wages in the form of take-home-pay, and very little in the form of expenditure for amenities on the job site, the employer who ignores this desire (or, equivalently, fails to ferret out this information) will suffer higher quit rates – or else he will have to increase his total wage package, in order to compete with other employers who are better able to discern employee tastes in this matter.

... labor unions have actually acquired the privilege of violent action. The governments have abandoned in their favor the essential attribute of government, the exclusive power and right to resort to violent coercion and compulsion. Of course, the laws which make it a criminal offense for any citizen to resort – except in case of self-defense – to violent action have not been formally repealed or amended. However, actual labor union violence is tolerated within broad limits. The labor unions are practically free to prevent by force anybody from defying their orders concerning wage rates and other labor conditions. They are free to inflict with impunity bodily evils upon strikebreakers and upon entrepreneurs who employ strikebreakers. They are free to destroy property of such employers and even to injure customers patronizing their shops. The authorities, with the approval of public opinion, condone such acts ... In excessive cases, if the deeds of violence go too far, some lame and timid attempts at repression and prevention are ventured. But as a rule they fail ... What is euphemistically called collective bargaining by union leaders and 'pro-labor' legislation is of a quite different character. It is bargaining at the point of a gun. It is bargaining between an armed party, ready to use its weapons, and an unarmed party under duress. It is not a market transaction. It is a dictate forced upon the employer ... It produces institutional unemployment.

The treatment of the problems involved by public opinion and the vast number of pseudo-economic writings is utterly misleading. The issue is not the right to form associations. It is whether or not any association of private citizens should be granted the privilege of resorting with impunity to violent action.

Neither is it correct to look upon the matter from the point of view of a 'right to strike.' The problem is not the right to strike, but the right – by intimidation or violence – to force other people to strike, and the further right to prevent anybody from working in a shop in which a union has called a strike. (Ludwig von Mises, 1966, pp. 777-79).

And in the view of Friedrich Hayek:

It cannot be stressed enough that the coercion which unions have been permitted to exercise contrary to all principles of freedom under the law is primarily the coercion of fellow workers. Whatever true coercive power unions may be able to wield over employers is a consequence of this primary power of coercing other workers; the coercion of employers would lose most of its objectionable character if unions were deprived of this power to exact unwilling support. Neither the right of voluntary agreement between workers nor even their right to withhold their services in concert is in question. (F.A. von Hayek, 1960, p. 269.)²

Given that there are legitimate and illegitimate forms of labor organization, it follows that sound public policy consists of defending the former and eliminating the latter. In legal terminology, this reduces to a call for the repeal of legislation that promotes invasive action, and for an expansion of the legal protections for non-invasive ones. In the just society, a union may do anything that individual citizens have a right to do, and must refrain from all activities prohibited to other citizens. The labor code, in other words, ought be nothing more than the ordinary rule of law (Hayek, 1973; Leoni, 1961, pp. 59-76), applied to management-labor relations.

This leads us to the \$64,000 question. Which arrows in the quiver of organized labor are invasive, and which are not? Let us start off by mentioning several legitimate techniques utilized by organized labor, and then look at the panoply of illegitimate actions engaged in by unions.

Legitimate Unionism

Mass Walkout

First is the mass walkout: threatening, or organizing, a mass

²Says Morgan O. Reynolds, 1984, p. 50: "Hitting a person over the head with a baseball bat is much less likely to be treated as criminal if the person wielding the bat is an organized (i.e. unionized) worker in a labor dispute." See also Hutt, 1939.

walk out, unless wage demands are met.³ This is not an infringement of anyone's rights, since the employer, in the absence of a contract, cannot compel people to work for him at wages they deem too low. Nor is it any valid objection to this procedure that the workers are acting in concert, or in unison, or in collusion, or in "conspiracy." Of course they are. But if it is proper for one worker to quit his job, then all workers, together⁴, have every right to do so, en masse.⁵ All conspiracy laws ought to be repealed, provided only that the agreement is to do something that would be legal when undertaken by a single individual.

There are numerous conservatives, as opposed to libertarians, who take the view that anti-trust and anti-combines law ought to be applied to unions.⁶ Thus, even what we have been describing as voluntary unions would be for them illegitimate, because they claim that "collusive actions" on the part of unions "exploit" the community as a whole,⁷ in their violation of consumers' sovereignty.⁸ But this only shows that there is all the world of difference between economists who support the system of laissez-faire capitalism, on the one hand, and those who favor a system of national or state capitalism on the other.

³This is on the assumption that there is no valid employment contract in effect at this time which prohibits such an act.

⁴This follows directly from a defense of voluntary socialism, vis a vis coercive Voluntary unionism is merely one facet of the former. For an elaboration of this point, see Walter Block, 1990.

⁵This is not a violation of the law of composition, or an instance of this fallacy. The only serious challenge to the textual statement is the case where harms can be additive. For example, the scenario where if one person touches another, slightly, it is not a rights violation, because no harm is done, whereas if a million persons do so, the victim can indeed be harmed, and thus there is a rights violation. The difficulty with this line of argument, though, is that even the first slight touching, done by only one person, is an illicit act, even though the harm is slight, or even non-existent, provided only that the victims person has been interfered with. See (to be supplied).

⁶In contrast, libertarians take the view that anti-trust and anti-combines legislation ought not be applied to anyone, neither unions nor business firms. See Armentano (1972, 1982).

⁷W. H. Hutt (1973, p.3, 1989); Schmidt (1973); Simons (1948). In sharp distinction, for a libertarian analysis which defends the right of organized labor to threaten or to quit in unison, see Petro (1957); Reynolds (1984).

⁸For a critique of Hutt, see Murray N. Rothbard (1970, pp. 561-566).

Back to Work Legislation

Again, libertarians would disagree with many "right-wing" conservatives on the question as to whether it is improper for governments to enact legislation forcing unions back to work where a union strike threatens to disrupt broad segments of the economy and to harm innocent parties not involved in the dispute. The libertarian viewpoint holds that the government does not have such a right, and that this follows from the basic libertarian premise of self-ownership. In the words of Murray Rothbard (1978, pp. 83, 84):

On October 4, 1971, President Nixon invoked the Taft-Hartley Act to obtain a court injunction forcing the suspension of a dock strike for eighty days; ... It is no doubt convenient for a long suffering public to be spared the disruptions of a strike. Yet the 'solution' imposed was forced labor, pure and simple; the workers were coerced, against their will, into going back to work. There is no moral excuse, in a society claiming to be opposed to slavery and in a country which has outlawed involuntary servitude, for any legal or judicial action prohibiting strikes – or jailing union leaders who fail to comply.

Conventional conservatives tend to place the national good above the good of individuals, so there is a basic disagreement between right-wing conservatives and libertarians on this issue.

Boycott

Another activity held to be legitimate by libertarians is the boycott, whether primary or secondary. A boycott is simply the refusal of one person to deal with another.⁹ All interaction in

⁹Thus, all anti-discriminatory laws are incompatible with the libertarian legal code. For an analysis which shows that such legislation is itself a rights violation, and that the free marketplace is the best protector of liberties, see Friedman (1985), Sowell (1983), Williams (1982).

It is logically inconsistent to maintain that people do not have the right to discriminate against one another, and that they do have the right to boycott, since the boycott is merely an orchestrated discrimination against certain individuals or groups

a free society must be on a mutual basis, but there is no presumption that any particular interaction must take place. It is part and parcel of the law of free association that any one person may refuse to associate with another for any reason that seems sufficient to him. Since a boycott is merely an organized refusal to deal with another, and each person has a right to so act, then people may act in this way in concert. A "hot edict," whereby a union declares the handling of certain products to be prohibited by organized labor, is a special case of the boycott. Provided that there is no contract in force which is incompatible with such a declaration, it, too, is an entirely legitimate activity. Says Rothbard (1983, p.131) in this regard:

A boycott is an attempt to persuade other people to have nothing to do with some particular person or firm – either socially or in agreeing not to purchase the firm's product. Morally, a boycott may be used for absurd, reprehensible, laudatory or neutral goals. It may be used, for example, to attempt to persuade people not to buy non-union grapes or not to buy union grapes. From our point of view, the important thing about the boycott is that it is purely voluntary, an act of attempted persuasion, and therefore that it is a perfectly legal and licit instrument of action ... a boycott may well diminish a firm's customers and therefore cut into its property values; but such an act is still a perfectly legitimate exercise of free speech and property rights. Whether we wish any particular boycott well or ill depends on our moral values and on our attitudes toward the concrete goal or activity. But a boycott is legitimate *per se*. If we feel a given boycott to be morally reprehensible, then it is within the rights of those who feel this way to organize a counter boycott to persuade the consumers otherwise, or to boycott the boycotters. All this is part of the process of dissemination of information and opinion within the framework of the rights of private property.

of people.

Furthermore, 'secondary' boycotts are also legitimate, despite their outlawry under our current labor laws. In a secondary boycott, labor unions try to persuade consumers not to buy from firms who deal with non-union (primary boycotted) firms. Again, in a free society, it should be their right to try such persuasion, just as it is the right of their opponents to counter with an opposing boycott.

Sorenson

An illustration of this principle took place in Canada. Alderman Bill Sorenson of North Vancouver City had voted to contract out the municipal garbage collection services to private enterprise. And, to add insult to injury – at least in the eyes of Local 389 of the Canadian Union of Public Employees (CUPE) – he also voted for a wage freeze covering all city employees.

The union didn't take long to strike back.

As it happens, Sorenson was the operations manager for the North Shore Community Credit Union, a local banking facility. As it also happens, Local 389 of CUPE holds deposits with this credit union. In response to Alderman Sorenson's votes on city council, the Union withdrew \$25,000 of its funds from the bank which employed Sorenson.

Now this decision to withdraw funds was no mere coincidence. It was motivated by spite – an attempt to get back at a part-time politician by attacking him in his capacity as a private citizen.

As a result of this act, Mr. Sorenson resigned his seat on the city council – it isn't clear whether he was forced to do this to keep his job.

According to pundits, this sorry spectacle was a threat to democracy. Said one editorialist, "It was a mean, cheap tactic on the part of a trade union, and no credit to the labour movement as a whole."

Mean? Yes. Cheap? Yes. Petty? Again, yes. But let's put things into perspective. The union, and all other depositors for that matter, have every right in the world to withdraw funds at any time they wish, for whatever reason seems sufficient to them. That, after all, is the meaning of a demand deposit. Such

an arrangement is the embodiment of a contract between two mutually consenting parties, the depositor and the lending institution. In choosing to withdraw \$25,000, even for this spiteful reason, CUPE Local 389 was thus completely within its moral and legal rights. The \$25,000 is owned by the union. It and it alone has the sole right to determine its place of investment. Neither Mr. Sorenson nor the credit union for which he works has any right to determine where, how or whether this money shall be invested. Certainly their rights have not been abridged by the decision of the proper owners¹⁰ to withdraw the money from the care of the bank.

Not only has the union every right to withdraw its funds for this reason, but other groups in society act in the same way – without the wailing and gnashing of teeth visited upon CUPE.

Does anyone really doubt that corporations deposit and withdraw their funds in accordance with what they perceive as their own best interests? Certainly, church groups and others have publicly withdrawn holdings from banks which have invested in South Africa, or which support firms which are not "ecologically sound." And do not consumers continually pick and choose amongst the stores they will patronize, partially on the basis of boycotting merchants who displease them, sometimes on the most subjective of grounds? Why should unions be singled out for opprobrium for stewardship of their own money?

Then there is the difficulty of legally prohibiting such behavior. How could government stop this practice without dictating how to spend and invest private property? Any attempt to stop such practices would surely involve us in the scenario warned against so eloquently by George Orwell, in his book *Nineteen Eighty-Four*.

Contrary to the political commentators, this act of boycott was a moderate response by the union, certainly when com-

¹⁰We are assuming for the moment, in effect, that CUPE is a legitimate or non-coercive union organization. Unfortunately, this is not at all the case. Their illegitimacy stems, however, not from their decision to boycott Sorenson's bank; it is a result of their failure to renounce initiatory violence as a means of conducting business.

