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Agricultural Labor Unions Are Exempt from Liability for Violation of Some Aspects of Federal Antitrust Law.

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and cite *Belle Terre* as authority for its enaction.[73] Instead of guaranteeing that all similar zoning laws will be upheld, each case will have to be analyzed on an individual basis to determine if any unreasonable burdens are placed on any members of the public.

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LABOR RELATIONS—Antitrust—Agricultural Labor Unions Are Exempt From Liability For Violation Of Some Aspects Of Federal Antitrust Law.

Bodine Produce, Inc. v. United Farm Workers Organizing Committee, 494 F.2d 541 (9th Cir. 1974).

The United Farm Workers Organizing Committee (UFWOC), an agricultural labor organization attempting to gain recognition by Bodine Produce, Inc., a grape grower, as the collective bargaining agent for its employees, instituted a nationwide group boycott of the plaintiff's grapes on wholesale and retail levels. The grower charged that UFWOC entered into agreements in restraint of trade with other labor groups of the AFL-CIO[1] in violation of the Sherman Anti-Trust Act.[2] The grower also charged that similar agreements were entered into by UFWOC with its own customers, in order to implement and execute the boycott. Bodine contended that such agreements operated to compel those dealing with it to cease doing business until the grower recognized the union as the collective bargaining agent for its employees since upon such recognition UFWOC would remove the boycott against grapes grown by Bodine.

UFWOC moved to dismiss the action on the ground that Bodine had failed to state a claim on which relief could be granted, arguing that its activities were immune from liability under the antitrust laws by authority of the

73. The Court in Euclid v. Ambler Realty Co., 272 U.S. 365 (1926) stated:
> The line which in this field separates the legitimate from the illegitimate assumption of power is not capable of precise delimitation. It varies with circumstances and conditions. A regulatory zoning ordinance, which would be clearly valid as applied to great cities, might be clearly invalid as applied to rural communities.

Id. at 387.

1. It was alleged by Bodine Produce, Inc. that UFWOC and its officers entered into combinations, agreements and conspiracies with representatives of the Amalgamated Meat Cutters and Butcher Workmen whereby the Meat Cutters agreed to assist UFWOC in policing and enforcing a national boycott of table grapes. Bodine Produce, Inc. v. UFWOC, 494 F.2d 541, 558 (9th Cir. 1974).

2. 15 U.S.C. § 1 (1970).

Clayton and Norris-LaGuardia Acts.[3] These major pieces of labor legislation modified the Sherman Act by giving labor unions certain privileges in actions involving labor disputes. Bodine contended that: (1) UFWOC's activities were outside the scope of this exemption from the antitrust laws; (2) that the activities resulted in giving its competitors an unfair business advantage, and (3) that such advantage was maintained through an alliance of illegal combinations and conspiracies comprised of UFWOC, other labor groups, and nonlabor business interests.[4] The United States District Court denied UFWOC's motion to dismiss and stayed all further proceedings pending determination of an appeal by the defendants. The questions presented on appeal to the Court of Appeals for the Ninth Circuit was whether the conduct specifically alleged in Bodine's complaint was within the labor exemption from the antitrust laws and whether the general allegations of the complaint were sufficient to state a cause of action. Held—*Affirmed.* If the primary purpose of the labor union in implementing and executing agreements does not exceed legitmate union aims and is designed to benefit union members,[5] then such a combination, even if it results in an anticompetetive situation, is within the scope of labor's exemption from the antitrust laws.

The enactment of the Sherman Act in 1890 precipitated a virgorous controversy over the proper application of antitrust laws to the labor movement. Congress subsequently determined that labor organizations were to be at least partially protected from the effects of the Sherman Act by means of the Clayton Anti-Trust Act, which established the initial exemption for labor from certain provisions of the antitrust laws.[6] The Clayton Act when considered together with the Norris-LaGuardia Act,[7] is interpreted as exempt-

3. These acts modified the Sherman Act by according labor unions broader latitude under the antitrust laws in actions involving labor disputes. Clayton Act, 15 U.S.C. § 12, 29 U.S.C. § 52 (1970); Norris-LaGuardia Act, 29 U.S.C. § 101 (1970).

4. The terms "agreement", "combination" and "conspiracy" will be frequently referred to simultaneously, as is the practice of the courts in antitrust. The distinction between a combination and an agreement lies in the presence or absence of mutuality of action, a combination essentially requiring a joint operation as opposed to a mere adding together. The essence of a civil conspiracy is a concert or combination to defraud, implying a combination formed with the fraudulent intent to monopolize trade. Cooper v. O'Connor, 99 F.2d 135, 142 (4th Cir. 1938); Mead Morrison Mfg. Co. v. Exeter Machine Works, 215 F. 731, 733-34 (D.C. Pa. 1914); Ball v. Coker, 210 F. 278, 282 (4th Cir. 1913).

5. "Legitimate union aims" under the Clayton Act refers to such concerns designed to benefit union members in terms of hours, conditions and other immediately relevant concerns of the working man, and not in furtherance of matters only of indirect concern to the union such as prices and other marketing factors. Bodine Produce, Inc. v. UFWOC, 494 F.2d 541, 547, 551 (9th Cir. 1974); *see* Clayton Act, 15 U.S.C. § 17, 29 U.S.C. § 52 (1970).

6. *See* 15 U.S.C. §§ 12-27, 29 U.S.C. § 52 (1970).

7. 29 U.S.C. §§ 101-115 (1970).

ing specific types of union activity,[8] undertaken in the course of a labor dispute, from prosecution under the federal antitrust laws.[9] A provision of the Clayton Act relevant to the juxtaposition of labor and antitrust policies provides that:

> The labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor . . . organizations . . . [or to restrain] such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations . . be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws.[10]

Because Congress has seen fit to enact two antithetical policies—the Sherman Act on one side and the Clayton and Norris-LaGuardia Acts on the other[11]—the courts have been impeded in their attempts to reconcile the labor exemption with the prohibitions of the Sherman Act.[12] Whereas antitrust law is meant to promote competition, labor law is intended to displace it, especially in the area of wages. Many decisions have emerged from efforts to harmonize these policies.[13] The trend indicates that union activity which apparently falls within the exemption may lose its protected character where the union has combined with nonlabor interests in order to effectuate certain ends considered irrelevant to the legitimate purposes of a labor union. Since the rationale of the exemption remains uncertain in view of the conflicting principles of labor and antitrust, the scope of the exemption consequently remains vague.

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8. Section 4 of the Norris-LaGuardia Act provides:

> No court . . . shall have jurisdiction to issue any restraining order or . . . injunction in any case involving or growing out of any labor dispute . . . (in) any of the following acts:
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> (a) Ceasing or refusing to perform any work . . . .;
>
> . . . .
>
> (e) Giving publicity to the existence of, or the facts involved in, any labor dispute . . . .

Norris-LaGuardia Act, 29 U.S.C. § 104 (1970).

9. The term "labor dispute" includes "any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating . . . or seeking to arrange terms or conditions of employment." Norris-LaGuardia Act, 29 U.S.C. § 113(c) (1970).

10. Clayton Act, 15 U.S.C. § 17 (1970); *see* 29 U.S.C. § 52 (1970).

11. The Norris-LaGuardia Act further expanded and clarified the aims of the Clayton Act. *See* Allen Bradley Co. v. Local 3, Int'l Bhd. of Elec. Workers, 325 U.S. 797, 806 (1945); United States v. Hutcheson, 312 U.S. 219, 231 (1941).

12. *See* Handler, *Labor And Anti-Trust: A Bit Of History*, 40 A.B.A. ANTI-TRUST L.J. 233 (1971); Morris, *Agricultural Labor and National Labor Legislation*, 54 CALIF. L. REV. 1939 (1966); Note, *Labor-Antitrust: Collective Bargaining and the Competitive Economy*, 20 STAN. L. REV. 684 (1968).

13. *See* Local 189, Amalgamated Meat Cutters v. Jewel Tea Co., 381 U.S. 676 (1965); U.M.W. v. Pennington, 381 U.S. 657 (1965); Allen Bradley Co. v. Local 3, Int'l Bhd. of Elec. Workers, 325 U.S. 797 (1945).

The interpretation and application of the Clayton Act has proved so nebulous that the Supreme Court expressed its views in *Duplex Printing Press Co. v. Deering*[14] in order to more clearly define the parameters of the exemption. The Court held that although the Clayton Act protected no more than the existence and lawful activities of labor organizations, it did prevent the application of antitrust law to a labor dispute between employees and their immediate employer.[15] *Duplex* was the first case to involve a secondary boycott similar to that imposed by UFWOC upon Bodine Produce, Inc.[16] The Court ruled that the labor exemption did not include the application of such a boycott to an employer's product, and refused to endorse the type of coercive measures practiced by the union in order to persuade wholesale customers to withhold their patronage from the employer through fear of union reprisals. Such an expansive interpretation of the Sherman Act would, today, preclude the operation of the UFWOC boycott.

Enactment of the Norris-LaGuardia Act vitiated the broad reach of *Duplex* by removing the power of the courts to issue injunctions in cases growing out of a labor dispute.[17] The Act made the ban on injunctions applicable regardless of whether the dispute was between employees and their employer or with a third party,[18] and took a neutral position toward secondary boycotts, neither legitimizing nor prohibiting them.

Previously, antitrust and labor legislation had drawn no distinctions between industrial and agricultural unions.[19] In 1935 however, the National Labor Relations Act (NLRA) specifically excluded agricultural workers from its definition of "employee."[20] The exclusion was the result of an ef-

14. 254 U.S. 443 (1921).

15. *Id.* at 446-51. The suit was brought by a manufacturer of printing presses against agents of the International Association of Machinists local when, after the manufacturer refused to enter into a contract with the local, it threatened the manufacturer's customers with losses and strikes should they patronize him.

16. A secondary boycott differs from a primary boycott in that the latter is a combination to refrain from dealing with an employer or to advise or by peaceful means persuade an employer's customers not to deal with him; while a secondary boycott is a combination to exercise coercive pressure upon an employer's customers in order to cause them to withhold patronage through fear of loss or damage to themselves, should they deal with that employer. Duplex Printing Press Co. v. Deering, 254 U.S. 443, 465-66 (1921).

17. 29 U.S.C. §§ 101-115 (1970).

18. 29 U.S.C. §§ 104, 113(a)(b) (1970). As a result of the ban the exemption could apply to any labor dispute concerning terms or conditions of employment "regardless of whether or not the disputants stand in the proximate relation of employer and employee."

19. Bodine Produce, Inc. v. UFWOC, 494 F.2d 541, 548 n.16 (9th Cir. 1974).

20. 29 U.S.C. § 152(3) (1970). Section 2(3) of the Act, 29 Stat. 450 (1935), states: "[B]ut shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home . . . ." The identical language now appears in the Labor Management Relations Act of 1947, 29 U.S.C. § 152 (3) (1970).

fort to accommodate the interests of both labor and agriculture which, with regard to farm workers, were inevitably conflicting.[21] Although leaving farm workers free to organize, the exclusion denied them the federally enforceable right to have their collective bargaining representatives recognized by their employers.[22]

While exclusion from the NLRA resulted in the denial of the right to be recognized, the agricultural unions were given a critical advantage over most other unions. Labor organizations under the auspices of the National Labor Relations Board were prohibited from engaging in any form of secondary activity[23], including boycotts, thus granting the non-regulated agricultural unions immunity should they participate in such activities.[24] But the implementation of secondary activities by agricultural unions could not, of course, transgress the bounds of applicable antitrust law.

In the first significant post-NLRA antitrust case, *Apex Hosiery Co. v. Leader*,[25] the Supreme Court ruled that restraints of trade resulting from a strike entered into by employees were not proscribed by the Sherman Act unless such restraints were intended to have, or in fact had, the effect of direct market control over a commodity.[26] While the strikers' actions resulted in the removal of the manufacturer's products from the market, the Court ruled that this was not intended as a device to restrict competition, but rather was designed to achieve legitimate union aims.[27]

The landmark case concerning the exemption was decided by the Court the following year. In *United States v. Hutcheson*[28] the union contested the assigning by the employer of certain work to outside contractors rather than to its own members. A secondary boycott was directed against the employer's product. Ruling that such secondary activity was not proscribed by existing legislation, the Court declared that:

> So long as a union acts in its self-interest . . . the licit and illicit under section 20 [of the Clayton Act] are not to be distinguished by any judgment regarding the . . . end of which the particulor union activities are the means.[29]

This represented the Court's first attempt to synthesize all prior labor and

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21. *See, e.g.*, Morris, *Agricultural Labor and National Labor Legislation*, 54 CALIF. L. REV. 1939, 1952-56 (1966).

22. *See* National Maritime Union v. Herzog, 78 F. Supp. 146, 155 (D.D.C. 1948), *aff'd mem.*, 334 U.S. 854 (1948), concerning the fundamental right of all employees to organize through representatives of their own choosing.

23. 29 U.S.C. § 158(b)(4) (1970).

24. DiGiorgio Fruit Corp. v. NLRB, 191 F.2d 642, 647 (D.C. Cir.), *cert. denied* 342 U.S. 869 (1951).

25. 310 U.S. 469 (1940).

26. *Id.* at 512.

27. *Id.* at 501.

28. 312 U.S. 219 (1941).

29. *Id.* at 232.

antitrust rulings. Rather than emphasizing the effects of union activity upon the market, the *Hutcheson* doctrine focused upon the nature of the union activity itself. The "market effect" test of *Apex Hosiery* became subordinate to the controlling question of whether or not the union was acting solely in its self-interest.[30]

Subsequent cases have attempted to redefine the doctrine of *Hutcheson*, which suggests that the exemption is inapplicable whenever a union conspires with a nonlabor group in restraint of trade. The question became not only whether an improper combination with labor interests existed, but whether or not a combination with other labor organizations was permissible as well. Such a question was introduced in the second allegation of Bodine Produce.[31]

The *Hutcheson* doctrine was applied by the Supreme Court in *Allen Bradley Co. v. Local 3, International Brotherhood of Electrical Workers*,[32] where an electrical union by means of strikes and boycotts, obtained closed-shop agreements with virtually all New York area electrical manufacturers and contractors. In a combination of similar structure to the UFWOC boycott, the contractors agreed to buy only from unionized manufacturers and the manufacturers likewise agreed to supply only unionized contractors. A sheltered market resulted that excluded non-union operators. The Court framed the issue precisely,[33] ruling that the policies of labor were to be subordinated to those of antitrust when a union participated in a business combination to allocate prices and markets.[34] The chief interpretive problem posed by the decision concerned the basis for distinguishing the parameters of a legitimate combination.[35] Successive cases dealt with the problem in view of the

30. *Id.*

31. From the defendant's allegations, subparagraph B: "The Defendants solicited agreements and entered into agreements with plaintiff's customers . . . pursuant to which said [customers] agreed with the defendants and among themselves, not to purchase, handle or sell table grapes."

From the defendant's allegations, subparagraph C:

> The defendants threatened plaintiffs' customers . . . with financial ruin and other damage . . . . In carrying out these threats, the defendants actively solicited the aid of many non-labor groups, and much of the actual work . . . was done by non-labor groups, . . . and individuals.

Bodine Produce, Inc. v. UFWOC, 494 F.2d 541, 558, nn. 49, 50 (9th Cir. 1974).

32. 325 U.S. 797 (1945).

33. As the court saw the situation, their problem in this case was "therefore a very narrow one—do labor unions violate the Sherman Act when, in order to further their own interests as wage earners, they aid and abet businessmen to do the precise things which that Act prohibits?" *Id.* at 801.

34. *Id.* at 810.

35. Although the words "legitimate combination" may appear to be mutually exclusive, the pertinent reconciliation of the phrase is accomplished by noting the distinctions between a combination, consisting of mere mutuality of action, and a conspiracy, which contemplates a combination formed with the fraudulent intent to monopolize trade. *See* Cooper v. O'Connor, 99 F.2d 135, 142 (4th Cir. 1938); Mead Morrison

Court's observance that the mere presence of a labor union could not insulate the combination from antitrust sanctions.[36]

From the attempts to harmonize labor and antitrust legislation it became apparent that the most to be achieved would be the striking of a balance between the divergent policies. As a result, interpretation of the *Allen Bradley* doctrine became increasingly capricious, and the Court chose, in 1965, to resolve the problem in what are currently the leading cases on the labor exemption.[37] Of the two cases, *Local No. 186, Amalgamated Meat Cutters v. Jewel Tea Co.,* is more pertinent in discussing the UFWOC boycott.[38]

The issue in the *Jewel Tea* case involved an agreement that impaired the ability of employers to deal with their customers. The agreement was a matter of standard union policy, and consisted of a collective compact solicited from an association representing virtually all food outlets in the Chicago area. The agreement effectively restrained competition by controlling the hours during which such outlets could sell fresh meat.[39]

In a split decision, the majority concluded that whether such an agreement is exempt from antitrust sanctions depends upon whether the restraint protects a legitimate union interest.[40] The legitimacy of union interest depends upon whether it is an interest recognized by national labor policy.[41] If such

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Mfg. Co. v. Exeter Machine Works, 215 F. 731, 733-34 (D.C. Pa. 1914); Ball v. Coker, 210 F. 278, 282 (4th Cir. 1913).

36. Some courts have interpreted the *Allen Bradley* case as broadly encompassing the rule that a union falls outside the labor exemption whenever it combines with management to fix prices and allocate markets. *See generally* Local 189, Amalgamated Meat Cutters v. Jewel Tea Co., 381 U.S. 676, 728-29 (1965); United Bhd. of Carpenters v. United States, 330 U.S. 395 (1947); Local 175, Int'l Bhd. of Elec. Workers v. United States, 219 F.2d 431 (6th Cir. 1965). Such an interpretation may also be justified by the fact that the Court in *Allen Bradley* frequently referred to this aspect of the union's activities. Allen Bradley Co. v. Local 3, Int'l Bhd. of Elec. Workers, 325 U.S. 797, 808-809 (1945).

37. Local 189, Amalgamated Meat Cutters v. Jewel Tea Co., 381 U.S. 676 (1965); U.M.W. v. Pennington, 381 U.S. 657 (1965).

38. The companion case, U.M.W. v. Pennington, 381 U.S. 657 (1965), involved an agreement which was ruled illegal under the antitrust laws because it restricted the union's ability to deal with other employers in the mining industry, as opposed to restricting the union's ability to deal with third parties such as wholesalers and retailers as is seen in the Bodine case. The agreement was also found to be made with the dominant purpose of eliminating industry competition, the court holding that "the union is liable with the employer if it becomes a party to [such a] conspiracy." *Id.* at 666.

39. The combination consisted of collective bargaining agreements with the representative association which effectively restricted the hours during which fresh meat could be retailed, allegedly in order to protect unionized butchers from having their duties taken over by convenience store clerks after 6:00 p.m. Jewel Tea Co., an employer of meat cutters and butchers, protested that such an agreement unduly restricted competition because the marketing of meat in the evenings was an important competitive device. It further urged that the agreements were not sufficiently connected with union self-interest to avoid antitrust violations. Local 189, Amalgamated Meat Cutters v. Jewel Tea Co., 381 U.S. 676 (1965).

40. *Id.* at 690.

41. *Id.* at 689.

an interest exists, the question then focuses upon whether or not the agreement is wholly calculated to protect the recognized interest and goes only so far as is necessary to do so.[42] The method for evaluating the breadth of the agreement as compared with its corresponding necessity was discussed by Justice White in the majority opinion: "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."[43]

Thus, after *Jewel Tea* there appears to have been formulated a twofold test to be applied to agreements solicited by a union in a labor dispute: (1) if the agreement is tantamount to a conspiracy, which implies the finding of "predatory intent" either upon the business of other nonlabor interests, upon employers, or upon the market, the exemption is unavailable; (2) if the agreement is not indicative of such a conspiracy but fails to encompass solely legitimate union interests as promulgated by the *Jewel Tea* doctrine, the exemption is similarly unavailable to the union.[44]

Because the NLRA specifically excludes agricultural workers from its benefits,[45] the court in *Bodine* necessarily based its decision more heavily upon precedents not involving the NLRA rather than upon the act itself. While pre-NLRA decisions have also remained authoritatively sound, *Bodine* employed them selectively, and, moreover, relied upon the *Pennington*

42. *Id.* at 690. As stated in Ramsey v. U.M.W., 265 F. Supp. 388, 397 (E.D. Tenn. 1967), *rev'd on other grounds,* 401 U.S. 302 (1971), in an interpretation of the Pennington and Jewel Tea decisions, the rule further contemplates that a union is exempt from the operation of the antitrust laws provided that it acts unilaterally rather than in a combination and that its activities are not in furtherance of matters which are only of indirect concern to the union, such as prices and other marketing factors.

43. Local 189, Amalgamated Meat Cutters v. Jewel Tea Co., 381 U.S. 676, 690 n.5 (1965). Mr. Justice Goldberg, while he disagreed with the use of the conspiracy test, still added: "Even if an independent conspiracy test were applicable to the *Jewel Tea* situation, the simple fact is that multi-employer bargaining at arm's length does not constitute union abetment of a business combination." *Id.* at 726.

Thus, although concurring with the majority, Mr. Justice Goldberg in distillation took the position that where no conspiracy is alleged, there can be no antitrust violation. Mr. Justice Douglas, in a brief dissent, rejected the idea that the presence of a labor union in an agreement insulates it from antitrust liability. *Id.* at 737.

44. It is clear that wherever a conspiracy exists between labor and nonlabor groups to injure the business of another nonlabor group, the exemption is not available. Justice White's opinion for the *Jewel Tea* majority suggests that even where there is no allegation of conspiracy, the union cannot claim exemption from antitrust law if the agreement it seeks does not encompass the proverbial "legitimate union interest". *See* Local 189, Amalgamated Meat Cutters v. Jewel Tea Co., 381 U.S. 676, 687-97 (1965). Furthermore, the mere existence of parallel contracts, as seen in *Jewel Tea,* will not constitute sufficient evidence of an antitrust violation. This was shown on remand of the *Pennington* case to district court. Lewis v. Pennington, 257 F. Supp. 815, 827-28 (E.D. Tenn. 1966). That court held in the final decision that a showing of predatory intent is a requisite to the finding of a violation of the exemption. *Id.* at 829.

45. National Labor Relations Act § 2(3), ch 372, 49 Stat. 450 (1935), *as amended* 29 U.S.C. § 152(3) (1970).

and *Jewel Tea* decisions for partial, though not conclusive support.[46] Although these two cases reflect current views concerning the scope of the exemption, the court chose to rely instead upon the *Hutcheson* decision,[47] assigning an inferior status to *Pennington* and *Jewel Tea.*[48] In citing this earlier authority as controlling, the court's objective appeared to be twofold: first, to be able to rely almost exclusively upon the *Hutcheson* self-interest test,[49] and secondly, to forego direct confrontation with the more restrictive confines of *Jewel Tea*, permitting greater latitude in the formulation of policy regarding the UFWOC boycott. But since the *Jewel Tea* doctrine could not legitimately be disregarded in any subsequent labor-antitrust case, it was considered in *Bodine*, but only in the most narrow and selective manner.

The court reasoned that since the primary goal of the UFWOC boycott was to secure recognition by growers, and because such a goal was "intimately related to wages, hours and working conditions," that the boycott was encompassed by national labor policy.[50] But such logic appears to overlook Justice White's emphasis in *Jewel Tea* upon the "relative impact [of the boycott] on the product market" as being the crucial determinant.[51]

The second facet of the *Jewel Tea* test contemplates the existence of a conspiracy with nonlabor interests to injure another nonlabor entity along with the finding of a predatory intent with reference to that entity.[52] Inferentially, the court confirms the allegation of Bodine Produce, Inc. that UFWOC was a member of such a combination, in which Bodine's wholesale and retail customers agreed with UFWOC "not to purchase, handle or sell table grapes."[53] The court believed that "[t]his amounts to a combination with 'nonlabor' groups in aid of the defendants' boycott; however, this activity is also within the labor exemption."[54]

The court added that even though it was quite possible that the combination operated to benefit business groups with whom agreements were made, UFWOC was nevertheless pursuing its self-interest.[55] It was concluded that such benefits were merely peripheral to the actual thrust of the agreements, apparently dismissing the distinct manifestations of *Apex Hosiery*, *Penning-*

46. Bodine Produce, Inc. v. UFWOC, 494 F.2d 541, 553-54 (9th Cir. 1974).
47. *Id.* at 554.
48. *Id.* at 553-54.
49. *Id.* at 554, 557.
50. *Id.* at 557.
51. Local 189, Amalgamated Meat Cutters v. Jewel Tea Co., 381 U.S. 676, 690 n.5 (1965).
52. *Id.* at 688-89.
53. Bodine Produce, Inc. v. UFWOC, 494 F.2d 541, 558 nn. 49, 50 (9th Cir. 1974).
54. *Id.* at 558.
55. *Id.* at 558, 560-61.

ton, and *Jewel Tea* which focused equally upon the effects of the combination upon the market.[56]

Through reference to the second phase of the *Jewel Tea* test it becomes evident that a conspiracy existed to the detriment of Bodine Produce, Inc. with possible benefit to nonlabor business interests.[57] UFWOC participation in the conspiracy allowed agreements to be established between competing wholesalers, retailers and grape growers which could not have otherwise resulted without the presence of a labor organization to nullify their antitrust liability.[58] Such a situation effectively disputes the possibility of mere unilateral action on the part of UFWOC. The fact that a legitimate combination with the Amalgamated Meat Cutters resulted in an effective boycott in addition to the distinct possibility that proscribed benefits would accrue to nonlabor interests, points to the questionable necessity for execution of further agreements by UFWOC with nonlabor interests.[59] The character of these combinations with nonlabor interests, and their subsequent impact upon the market question particularly whether or not UFWOC was fastidious in considering the scope and effect of the agreements.[60]

It is not difficult to see how the intrinsic design of the self-interest test can be judiciously molded to fit the requirements of various circumstances. The test remains an apparently capricious method for determining the scope of a union's exemption from the antitrust laws. Neither have the characteristics of licit and illicit combinations been isolated to an extent sufficient to place them uniformly within or without the exemption.[61] As such, a court might de-emphasize the impact of a combination upon the market while stressing its immersion in self-interest. Secondary methods employed by unions which overstep the limits of labor law sanctions are made peripheral

56. *Id.* at 558, 560-61.

57. Illustrative are the court's findings concerning the existence of the conspiracy and the possible benefits that could inure to the business interest. *Id.* at 558-59.

58. Justice Douglas in *Jewel Tea* plainly rejected the idea that the mere presence of a labor union in an agreement immunizes the members of that agreement from antitrust liability. Local 189, Amalgamated Meat Cutters v. Jewel Tea Co., 381 U.S. 676, 737 (1965). Justice White emphasized that a factor militating against a union's exemption where the bounds of necessity are exceeded by an agreement in its impact upon the product market. *Id.* at 690 n.5.

59. The boycott succeeded, primarily because the Amalgamated Meat Cutters agreed with UFWOC to police and enforce the retail and wholesale boycott by threatening to strike non-complying outlets. Such an agreement, made only between labor groups, was not proscribed by antitrust law. Bodine Produce, Inc. v. UFWOC, 494 F.2d 541, 557 (9th Cir. 1974).

60. Such combinations are also difficult to reconcile with the *Allen Bradley* test since they result in market allocations: "[W]e think Congress never intended that unions could, consistently with the Sherman Act, aid nonlabor groups to create business monopolies and to control the marketing of goods and services." Allen Bradley Co. v. Local 3, Int'l Bhd. of Elec. Workers, 325 U.S. 797, 808 (1945).

61. The exemption includes those formed to restrain trade, and those having an identical effect but dissimilar design.

to the predominant purpose of the union and as a result it stays within the exemption.

The court in *Bodine* has drawn a fine line between illicit union cooperation in a combination that enables business interests to procure monopolistic benefits, and legitimate union involvement that merely results in such proscribed benefits.[62] It is evident that purely unilateral union action does not of itself violate antitrust laws, even if a situation is produced indistinguishable from that which would result in an illicit combination.

In the absence of appropriate legislation requiring an employer to bargain collectively with the representatives of his employees, agricultural unions, out of necessity, resort to secondary tactics. Unless the monopolistic design of a combination is apparent, genuine criticism cannot be brought to a court that makes supportive use of precedent in formulating what must be a policy decision. When cases in the unregulated agricultural labor sphere arise, a balance must be drawn between the various interests that could not otherwise transpire were the courts wholly committed to precedent.

The policy established by the *Bodine* decision has the substantial effect of providing agricultural labor with increased leverage among the large agricultural interests that decline to recognize UFWOC and similar organizations.[63] But while increasing the influence of labor unions, this and similar policy decisions can have the cumulative effect of obscuring vital distinctions between the contrary purposes of labor and antitrust legislation. Albeit in *Bodine* the court reached a necessary and equitable decision in the absence of viable alternatives available to UFWOC. Yet a growing emphasis in the labor sphere upon policy, commensurate with the absence of an operable and expedient exemption test, can surreptitiously operate to abuse the unregulated posture of agricultural labor. Such an emphasis could result in the creation of lucrative opportunities for violation of antitrust standards by failing to provide labor with a basis for formulating secondary activity agreements.[64] The existence of such opportunities would ironically frustrate the

62. Even legitimate union interest cannot serve to exempt a union from antitrust sanctions when in securing that legitimate goal the union agrees to a market allocation or other conspiracy to create an unfair business advantage for the nonlabor parties. This is the clear teaching of Allen Bradley Co. v. Local 3, Int'l Bhd. of Elec. Workers, 325 U.S. 797 (1945); and U.M.W. v. Pennington, 381 U.S. 657 (1965); *see* Clayton Act, 15 U.S.C. § 17, 29 U.S.C. § 52 (1970).

63. The case was remanded to the district court for further proceedings not inconsistent with the court of appeals. Bodine Produce, Inc. v. UFWOC, 494 F.2d 541, 562 (9th Cir. 1973).

64. It is evident from the legislative history of the House of Representatives debates on the Taft-Hartley Act, 29 U.S.C. §§ 141-187 (1970), that the narrowing of the scope of the labor exemption, or the regulation of the exemption was discussed and rejected.

> Just what really basic concessions did the House conferees make? We conceded on the ban in our bill on industry-wide bargaining . . . . We conceded on the