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Hobbs
Act

Criticism 11

Criticism: S. 1630 would --

11. Codify the Enmons case insulating union from prosecution under the Hobbs Act

The insertion of the word "wrongful" under section 1722(c)(2) specifically recodifies the language under which United States v. Enmons, 410 U.S. 396 (1973), was decided. That case held that the federal government could not prosecute under the Hobbs Act for an incident of union violence involving the destruction of a transformer.

Response: S. 1630 maintains the present law in this area. It carries forward the existing Supreme Court interpretation that exempts labor unions, while engaged in collective bargaining, from prosecution under the principal federal extortion statute as it might otherwise apply to extortionate demands made in connection with such bargaining (18 U.S.C. 1951, the Hobbs Act). This approach was taken by the primary sponsors of the bill in order to avoid an admittedly controversial attempt to change current law.

Several of the sponsors of S. 1630 have introduced separate legislation to eliminate the current exemption for labor unions. That legislation is now pending in the Judiciary Committee as S. 613.

Reply: The response essentially concedes that the criticism is accurate.

TO: MORTON BLACKWELL
FR: GARY CURRAN

2/5/82

RE: HOBBS ACT - REPEAL OF ENMONS

HERE IS THE INFO ON THIS. SEN GRASSLEY
WILL OFFER AN AMENDMENT TO S1630 POSSIBLY NEXT
WEEK TO STRIKE "WRONGFUL" A REP HOUSE STAFFER
TOLD ME TODAY THAT THE JUSTICE DEPT IS PUTTING ON
THE PRESSURE TO REPORT THE CRIM CODE BILLS HR4711 OR
HR1647.



**Associated
Builders and
Contractors, Inc.**

*Morton -- Are you
interested in
this? what
is status?*

444 N. Capitol Street, N.W.
Suite 409
Washington, D.C. 20001
(202) 637-8800

January 28, 1982

Mr. Wayne Valis
Special Assistant to the President
The White House
Washington, DC 20500

Dear Wayne:

Attached is a copy of testimony given by Dennis Troesh, president of Robertson's Ready Mix, Inc., in Riverside, California. Dennis' company is a member of our association, and he testified before the House Judiciary Subcommittee on Criminal Justice. I think this testimony is very revealing, and I hope that you will review it and pass it on to others who might be interested. Amendments to the Hobbs Act is a crucial issue. We certainly hope that you will use your influence to insure that the rights of individuals are protected from the kind of extortion described by Mr. Troesh.

Thank you very much.

Very truly yours,

Hubert L. Harris
Executive Vice President

Enclosure

BEFORE THE SUBCOMMITTEE ON CRIMINAL JUSTICE
OF THE JUDICIARY COMMITTEE
OF THE
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON, D. C.

TESTIMONY OF
DENNIS TROESH, PRESIDENT
ROBERTSON'S READY MIX, INC.

December 8, 1981

TESTIMONY OF DENNIS TROESH

Mr. Chairman. Members of the Subcommittee.

My name is Dennis Troesh. I am President of Robertson's Ready Mix, Inc., which is located in Riverside, California.

I am appearing before you today at the invitation of this Committee and its Chairman. I am grateful for the opportunity to present my story and my views concerning some of the proposed revisions to the federal criminal laws. Specifically, I will address the extortion provisions of H.R. 4711 and H.R. 1674 which are contained in Section 2522 of both bills.

I am not an attorney. I am not a law enforcement officer. I am not a legislator, or a public official.

I am a businessman.

I run a small business: a ready-mix concrete company which provides concrete and concrete delivery services from three plant locations to customers located in San Bernardino, Riverside, and Orange Counties in California. My firm employs approximately 80 employees, the majority of whom are truck drivers. My business is not unionized.

It has never been unionized. No union has ever sought a secret-ballot election through the National Labor Relations Board to represent my employees. To my knowledge, none of my employees wishes to be represented by a union. My

employees receive competitive wages, good fringe benefits, and satisfactory working conditions.

My business is dependent upon the health of the construction industry and upon those construction contractors and owners which need ready-mixed concrete for the construction of residential, commercial, and other structures.

During the last year, my firm has serviced numerous private and public projects. It has delivered ready-mixed concrete to military installations, highway projects, and housing developments. My business is closely tied to interstate commerce. In order to operate, my business depends upon raw material shipped directly to it daily from the State of Nevada.

I am here today because I believe that this Subcommittee should know what has happened to me as a result of a failure of law enforcement to handle "union" extortion.

The Hobbs Act is the federal extortion statute. That Act's effectiveness against union extortion conduct has been limited by the U.S. Supreme Court's decision in U.S. v. Enmons so that unions can use force, violence, or fear--even fear of economic loss--to gain their objectives in a labor dispute.

The Enmons decision exempts virtually all union conduct in a labor dispute from the reach of the federal extortion statutes. It needs to be overturned by Congress.

Extortion has no more place in labor disputes than it does in business.

I do not quarrel with the right of unions to represent employees, with the right of employees to join or be represented by unions, or with the right of unions to gain higher wages for employees by striking an employer for legitimate purposes.

I do quarrel with the notion of law enforcement officials that unions can do most anything so long as they say that their object is legitimate, even if it is not.

On March 19, 1980, my company delivered concrete to a customer's construction project in El Monte, California. The project was being picketed. Threats of violence and other retaliation to another ready-mix company's drivers had stopped concrete deliveries. We took over the concrete delivery work. Representatives of a union, which was picketing the construction project, followed my company's trucks a distance of roughly 40 miles back to the company's facility in Riverside after our delivery, for no apparent reason.

The following morning, seven of my ready-mix concrete trucks were firebombed.

Four were totally destroyed. Gasoline had been thrown in the cabs of the trucks and ignited.

The local police and fire departments were called. They investigated. Nothing happened.

The Treasury Department's Bureau of Alcohol,

Tobacco and Firearms, and the F.B.I., also conducted an investigation. The investigators told me that (1) they knew who the responsible persons were, and that (2) they were members of or connected with local area unions.

Neither federal nor state or local law enforcement officials have taken any action against the alleged perpetrators. I don't know why; but, according to the Bureau, the firebombing occurred because I delivered concrete to a picketed construction project.

Two weeks after my trucks were firebombed, the Teamsters Union sent a letter to me threatening to picket my company. The letter said that the Union did not want to represent my employees, did not want me to sign a Union contract, and that the Union had heard that I did not pay "prevailing wages." I had discussions with Teamsters Union representatives. They told me they were not interested in whether I paid "prevailing wages." Then they said that they wanted me to sign a Union contract, and not deliver to picketed firms. Since it was illegal for my company to force union representation on my employees, I did not agree to the demands.

The trouble started again. The Teamsters picketed. The Laborers Union joined the fight.

Many of my customers stopped doing business with me. During the picketing, my employees were threatened. Union agents brandished guns at them, and told them that

they "would get them."

During this time, the federal and state law enforcement officials took no action with respect to the Union conduct, or with respect to the firebombing. The state and local law enforcement officials told me that they did not get involved in "union" problems. The federal authorities thought it was just a "union" problem.

After three months, my attorneys got the picketing stopped. But that didn't end the problems.

In August, 1981, the Laborers Union and the Teamsters Union contacted me. They told me that they could not "live" with my delivering of concrete to picketed employers. They told me I'd have to stop doing so, or face "problems." Isn't that attempted extortion? Isn't that an attempt to take away my property--my right to do business with customers and solicit new business--by "fear"? I think so. But, it didn't stop there.

On October 5, 1981, an agent of the Laborers Union, and representatives of three of my customers designed a plot to destroy my company. A Laborers Union agent and three of my customers held a meeting and agreed to run me out of business unless I (1) stopped delivering concrete to construction projects which were being picketed by the Laborers Union, (2) stopped selling concrete on weekends, and (3) signed a contract with the Teamsters Union. I was told by three of the persons involved that if I did not go

along with these demands, three of my most valued customers, customers which represented 40% of the gross volume of my business, would stop using my company's services. I was also told that the union would ensure that all my customers did business with ready-mix companies other than mine.

I was given four days to decide. On October 9, 1981, I asked for more time. It was refused. I learned then that "the plan was in effect."

When I learned about this scheme, I contacted the federal authorities, the local Sheriff's Department, the local police, and my attorneys. The Anti-trust Division of the U.S. Department of Justice seemed interested, but was unable to do anything about it then. The F.B.I. felt that there was no federal jurisdiction. The Bureau of Alcohol, Tobacco and Firearms advised me that they could not help unless another firebombing or something similar occurred. The local authorities viewed it as a "labor dispute" and were unwilling to get involved.

On October 12, 1981, the Laborer's Union agent called and asked me to meet him at a coffee shop. He said that three construction firms had called him wanting to know if it was "all right" to use my company for ready-mix concrete. I met with him. He told me that he "had given away" a substantial amount of my customers' business to a competing ready-mix company, that I had lost the business of a major customer, and that another customer would not

use me or the union would put him out of business. The agent told me that he could not live with my being "non-union" anymore, that he had me in a "box," that if I did not agree to his demands, he would make sure that my customers stopped doing business with me.

On October 13, 1981, representatives of the Teamsters Union delivered a letter to me saying that the union did not want to sign a contract with me, but that it was going to picket me. Copies of that letter went to the Laborers Union and to the Operating Engineers Union.

On October 14, 1981, my attorneys and I met with the F.B.I. to present evidence showing an extortion attempt under the Hobbs Act. We thought there had been: the persons involved wanted to take away my property--my business right to chose my customers--by fear of current economic loss.

The F.B.I. agents told me and my attorney that the conduct was not proper, but that the Enmons decision meant that the federal government could not get involved because this was a labor dispute.

Subsequent conversations between my attorneys and the U.S. Attorney's Office proved fruitless. The U.S. Attorney's Office told us that Enmons applied. The Anti-trust Division of the U.S. Department of Justice told us that it does not get involved in extortion cases. The Bureau of Alcohol, Tobacco, and Firearms said "call us if there is

another bombing."

On October 16, 1981, I met with representatives of the Teamsters Union, the Laborers Union, and with one of the customers who had indicated he would not do business with me unless I agreed to the three demands. At this meeting, they restated the demands. Later that day, I told them that I would not go along with them.

I did so because I do not believe that "free enterprise" means that people can engage in extortion to get me to close my business, to confine my business to certain customers, or to execute an illegal union contract.

When I told the Laborers Union agent that I would not go along, he angrily told me, "you take your lumps."

On October 20, 1981, the Laborers Union agent told one of my customers, ". . . they are not going to burn his trucks this time . . . I have talked to people I haven't talked to in ten years . . . it's out of my hands . . . the big boys have it now." I was advised to tighten the security around my house, my family, and my business, and to be aware for my own personal security. In fact, the following statement has been attributed to a union agent: " . . . Dennis' life isn't worth shit. . . ."

My attorneys argued with the U.S. Attorney's Office, argued with the F.B.I., and argued with the representatives of the Anti-trust Division of the U.S. Department of Justice about Enmons and labor disputes. I argued with the

Bureau of Alcohol, Tobacco, and Firearms. I talked to the Sheriff's Department and the local officials. We received the same consistent response: It is hard to get involved in cases where unions are concerned. The Enmons decision precludes us from getting involved. The unions have an exemption. We don't get involved in labor disputes.

It seems that the mere mention of the word "union" scares off law enforcement officials.

Extortion schemes, whether they involve force, violence, or fear, including fear of economic harm, have no place in our society. That's what Congress said when it enacted the Hobbs Act. Unions should not be exempt simply because they are unions. Only lawful union conduct for lawful union purposes should be exempt.

While people argue over what Enmons means, or doesn't mean, extortion continues. The mere fact that a union is involved, or that a union seeks a contract from an employer, should not give a union an exemption from our criminal laws, or a license to use force, violence, or fear to exact demands from an employer.

I cannot understand what kind of country we have if crimes are committed but law enforcement won't get involved because "it's a labor dispute."

Since I first brought my problems to the attention of the authorities, nothing has been done to stop the union. The plan is currently being carried out. Here's what's

happened in a little over two months:

1. The Laborers Union threatened my largest customer with ruination unless it stopped buying from me. My customer quit buying concrete from me.
2. Two of my other largest customers have stopped doing business with me for the same reason.
3. Union representatives have contacted many of my customers and requested them not to use me.
4. We have received telegrams from some customers cancelling orders.
5. We have received telephone calls from others indicating that the "union" says they cannot use our company.
6. The Operating Engineers Union, which has never contacted me in the past, began picketing my firm and has continued to do so to the present day.
7. The pickets follow my trucks, harrass my truck drivers, cause an interference with my business, and a reduction in the number of orders I receive.
8. I have lost at least 50% of my business.

Why is it that extortion through fear can be engaged in like this? Why do I fear for the safety of my property and my person? Why haven't the authorities acted?

The answer is very simple: Enmons. No state or federal authority wishes to get involved in a situation which they think is merely a "labor dispute."

What is happening to me is not a legitimate union matter. None of the unions have asked to represent my

employees. None of my employees have asked to be represented by a union. Any union contract that I might sign now would be illegal.

I believe that the Hobbs Act should be amended. It needs clearly to cover union wrongs. It should say clearly that unions cannot engage in force, violence or fear to take away an employer's property. What is needed is for the Act to declare that extortion attempts, whether by force, violence, or fear, including fear of economic loss, cannot be committed by anyone, including unions, whether or not those attempts occur during the course of a "labor dispute."

I do not understand the legal technicalities which prevent law enforcement from enforcing the Hobbs Act in "labor disputes." Maybe it is not technicalities that do so. Maybe law enforcement just doesn't understand what is and what is not unlawful. Maybe the law needs only to state clearly what is and what is not criminal. If it did, it would help me, and it would help law enforcement.

To do this, I suggest, and my lawyers have helped me with this, that the word "wrongful" be deleted from Section 2522 of the two bills, H.R. 4711 and H.R. 1674, which you are considering. Also, the definition of "property" in Section 101(32) should clearly include business or business rights. If you did so, the Act clearly would cover the kinds of problems I have experienced.

To satisfy unions, a provision could be inserted clearly exempting only lawful union conduct. To do so, a new provision should be inserted in Section 2522, stating:

"(f) Only lawful activities of labor organizations which are engaged in for legitimate collective-bargaining objectives are not prohibited by this Section."

If the bills you are considering are passed by Congress in their present form, without these amendments, the federal criminal laws will not cover what really goes on. State and local law enforcement will continue to "look the other way." Congress will have enacted a dangerous precedent, and will then have granted to all unions the ability to do to other companies what some unions are now doing to mine.

Worse yet, you will permit force, violence and fear to be used by unions in all labor disputes--legitimate or not--because federal, state and local law enforcement won't get involved in "labor disputes." I ask that you not do that. I don't want to have another firebombing.

Thank you for the opportunity to be here today.

help (themselves) professionals of the
rip off
society.