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WORKERS AND OPPRESSED PEOPLES OF THE WORLD UNITE!

Union-busting in the Reagan era:

How can labor fight back?

The bosses have declared war on the unions. Contracts are being torn up and wages slashed. The question is how to fight back and defend workers' rights.

In the strike against the Wheeling-Pittsburgh Steel Corp. the labor movement has taken a stand and said, "Enough is enough." The strike, which began July 21, has received little notice by the big business-controlled media. But it is a life-and-death struggle for the union in the steel valleys of Ohio, Pennsylvania and West Virginia. A victory by the striking steelworkers at Wheeling-Pittsburgh would herald a new beginning for the union movement.

Inside is an analysis of that strike by Sam Marcy and a bold strategy for victory that could begin to turn around the Reagan era of union-busting.

On July 21, the 8,200 workers at the Wheeling-Pittsburgh Steel Corp. walked out in three states after a bankruptcy judge ruled that the company could throw out its contract with the United Steel Workers (USWA) union and dictate a new contract that would have lowered take-home wages to under $6 an hour and eliminated work rules, safety and seniority rights.

Ever since Reagan's attack on the air traffic controllers (PATCO) four years ago, union-busting and strike-breaking have had the full support of the government. What is new in the Wheeling-Pittsburgh struggle is the company's use of the bankruptcy court to eliminate its binding contract with the union.

It is an anti-union conspiracy with the big corporations, banks, courts and government all joined together in an open attack on the working class and its unions.

A debate has been taking place within the union movement on how to meet this challenge, the gravest challenge the unions have faced in generations.

In this three-part series, Sam Marcy makes an important contribution to this debate. Marcy, a regular contributor to Workers World newspaper, is a former steelworker and long-time labor organizer. He has had extensive experience in preparing strike tactics as well as dealing with the day-to-day problems of all kinds of union work.

These articles examine the issues in the strike and put forward a strategy that could lead to victory for the workers.

In examining the legal questions raised by Wheeling-Pittsburgh's use of the bankruptcy court to eliminate the union contract, Marcy shows how the company has lost legal title to its properties. Therefore, as the company's principal creditor, the steel workers' union is the de facto owner, can take over as trustee in bankruptcy reorganization and operate the mills for the benefit of the workers.

The articles conclude that in order for the union to defend its rights, it is legally necessary to take possession of the mills:

"Every passing day makes it more urgent that the union take concrete steps in a new direction. That is, for the union and the workers to complete the process begun by the company and to move from being the de facto owner of the company to taking possession and occupying the mills. . . The question of possession is critical to the success of the strike."

These articles offer a valuable analysis and strategy for victory. It is a welcome antidote to the poison being offered by TV and newspaper commentators as well as some who call themselves "friends of labor," who all seem to say that labor can only move in the direction of set-backs and defeat.

One note about these articles. All were written originally for Workers World newspaper, which appears weekly. What appear here are the articles as they originally appeared.

Therefore, there is some repetition as important points from an earlier article may be repeated. But this does not distract from the overall impact of the articles. They are alive with the weekly changes in the strike, each reflecting some new development on the picket line or in the courts.

Already, these articles have been read and discussed by many local activists in the union movement. But they deserve a wider circulation. That is why we have reprinted them together in full in this special edition of Workers World.

If you would like additional copies write to us at: Workers World, 46 W. 21 St., New York, N.Y. 10010 or call (212) 255-0352. Be sure to ask about our special prices for bulk orders.

—Gary Wilson

The Wheeling-Pittsburgh strike—what to do next

By Sam Marcy

JULY 23—The Wheeling-Pittsburgh steel workers' strike is bound to have a profound influence on the course of the labor movement in the U.S.

The basic issue in this strike is not so much whether the union or the company can "give a little here or there." The union has done this in a substantial way three times in the last few years.

The issues in this strike far transcend the local character of the struggle. This strike raises the question of whether the labor movement should continue its steady retreat in the face of an unrestrained and frenzied anti-labor offensive unleashed by big business and the giant banks, and promoted by the Reagan administration.

A tactical retreat here or there with the union making concessions, whether minor or even important, sometimes becomes inevitable under difficult objective circumstances. Such retreats have occurred in the entire historical course of the struggle of the trade unions, the working class and all oppressed peoples.

The movement has survived them all. After a brief period of relative passivity, the labor movement has always been able to exhibit a strong resurgence. Ultimately new attempts at organization and vigorous actions to revive the struggle have not only beaten back the offensive of the bosses but have achieved magnificent results, many of which are now in peril.

The question now is whether the labor movement can at last come to the realization that further retreats endanger the very existence of the movement. In all kinds of war a line has to be drawn beyond which further retreats cannot be tolerated for fear of a complete collapse or surrender. That is precisely what the ruling class is striving for at the present time.

The strike of the Wheeling-Pittsburgh workers was forced upon the United Steel Workers (USWA) after a very long period of elaborate and exhaustive negotiations. The critical point came on Wednesday, July 17.

On that date, a federal bankruptcy judge sitting in Erie, Pa., ruled that the union contract is no longer valid and in effect cancelled the collective bargaining agreement between the union and the company. He also gave Wheeling-Pittsburgh Steel the right to change the hourly wage rate of the workers, reducing it to $8.10 an hour, and to rewrite the rules governing the working conditions, all in favor of the company.

Can a judge cancel a legal contract?

How could this happen? Can a judge cancel a contract duly signed, delivered and executed between a union and a company and change the wages and working conditions to suit the company?

What is this bankruptcy business anyway and what has it to do with the workers and their union? Since it was the judge's ruling which touched off the crisis between the company and the union and forced the workers onto the picketline, it is this which we must first examine.

What is bankruptcy? A company is bankrupt when its liabilities exceed its assets and consequently it cannot pay out or discharge its debts. Don't fall for the line that this is an oversimplification. It is not. It is the very essence of the federal bankruptcy act and especially of the well-known Chapter 11 which corporations use under bankrupt conditions.

The original purpose of the bankruptcy legislation was to stop the courts from meting out harsh prison sentences to debtors who could not pay their bills. The legislation was not designed for huge, greedy corporations to use the bankruptcy code to throw the burden of their mismanagement and failures upon the workers.

Constitution forbids one-sided bankruptcy laws

The Constitution of the United States (Article 1, Section 8) only authorizes Congress to establish "uniform laws" on the subject of bankruptcy. It does not authorize uneven, one-sided and twisted bankruptcy legislation which completely favors the employers as against the workers. But that is what Congress did in 1984 when it amended the bankruptcy law and inserted a provision in it entitled "Rejection of Collective Bargaining Agreements" (Section 1113).

Bankruptcy proceedings are divided into two categories—involuntary and voluntary proceedings. The involuntary ones are when a creditor attempts to throw the company into bankruptcy because of its failure to discharge its debts, imminent fraud, misappropriation of assets, or conceivably because a creditor has reason to believe there might be an imminent collapse of the company.

Has any creditor tried to force the company into bankruptcy? Significantly enough, of the many creditors of Wheeling-Pittsburgh Steel none of the creditors are attempting to throw the company into bankruptcy.

After all it's the creditors who presumably have the greatest stake in the company. It is they who follow the financial and economic position of the company and they are the ones who traditionally know what is going on, even behind the financial jugglery of the company. Yet no attempt has been made to throw the company into bankruptcy.

Why haven't they tried to do that in the face of company losses? Because all of them know that the total assets of the corporation exceed its liabilities. The assets include the physical plant, all fixed properties and real estate. The assets also include what is known as liquid assets. These are securities of all kinds including government securities, interests in other corporations, stocks and bonds, all of which can be easily converted into cash. The large bank creditors also understand that a huge corporation like Wheeling-Pittsburgh usually has hidden assets as well, which the company can finagle with.

The bankruptcy proceeding in the Wheeling-Pittsburgh case is a voluntary one, as distinguished from an involuntary one. It is something that the company has chosen on its own. No one forced it to do it.

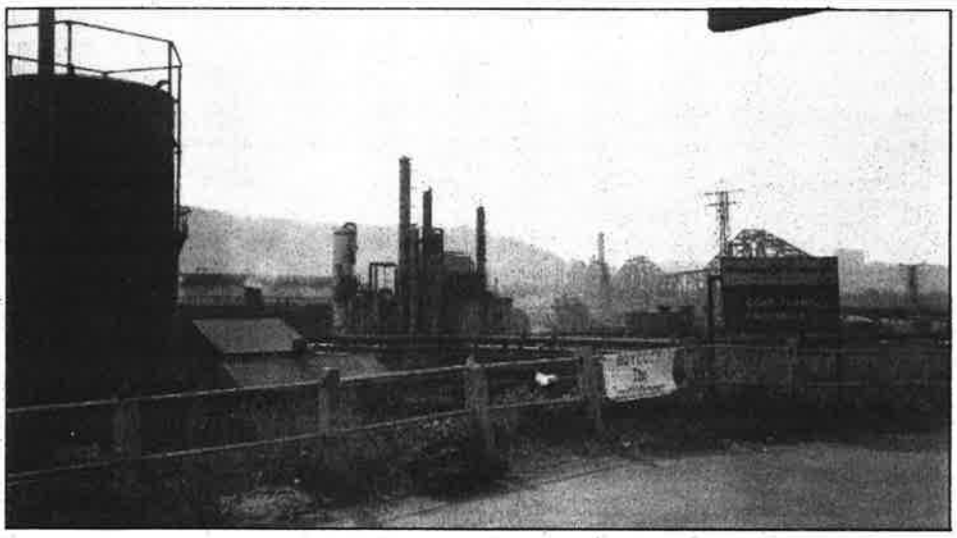
It has decided to file a petition for bankruptcy in order to get a judge to summarily and unilaterally cancel the contract with the union. The company says this is necessary because of some of the losses it has sustained.

We are told over and over again the company has lost money over a period of time and may lose more. However, losses by a company, or its failure to show a profit, is not a legal basis for bankruptcy. There are hundreds of corporations which have failed to show a profit for several years, but bankruptcy is not the route they have taken.

Take for instance one of the largest financial corporations in the U.S.—BankAmerica. It just reported a loss of over $300,000,000 and it has sustained losses for several years. But there is no indication that it is going to file for bankruptcy precisely because, like Wheeling-Pittsburgh Steel and others, its assets far exceed its liabilities.

Went to court to destroy union contract

Thus Wheeling-Pittsburgh Steel is not being thrown into bankruptcy by its creditors but has voluntarily decided to do so on its own. This is not because its liabilities are greater than its assets but because Wheeling-Pittsburgh is interested in destroying its contract with the union, which binds it legally at least for another year. Since it has no legal basis to invalidate the terms of the contract, Wheeling-Pittsburgh has sought to utilize bankruptcy to achieve its objective without directly violating the contract.



Who is an owner and not an owner is the rock-bottom core issue in the struggle. By filing for bankruptcy the company has become a non-owner and lost its legal title. The union has become the de facto owner on behalf of the workers by virtue of its indisputable position as principal creditor of the company.

Thus the bankruptcy judge, Warren W. Bentz, has given the company what it otherwise could not get. Just what is the meaning of this? It is a paramount question for the union and the labor movement in the country as a whole.

Involved here is not just an interpretation of the bankruptcy law. Involved here are not merely legalistic niceties and treacherous ambiguities or only a tortured statutory interpretation. This is not just a legal proceeding in the real sense of the word.

It's political intervention by the government

What is involved is **government** intervention without legal justification into what was hitherto called free collective bargaining between management and labor. It is political intervention by the government under cover of a judicial process—encouraged, promoted and vigorously pushed by the Reagan administration.

The bankruptcy proceeding is merely a legal expression of a political struggle, at bottom a class struggle, of the first magnitude. It brings to the fore a reactionary, anti-labor struggle in the form of a judicial proceeding whose sole aim is to nullify the hard won collective bargaining *rights* of the workers. Were this to continue unhindered by the labor movement it would virtually end collective bargaining as it has been practiced over the years. It would give the government the right through the judiciary to either rewrite or invalidate union contracts at will.

It should also be borne in mind that in the last few years the Reagan administration has been packing the judiciary to the point where almost half of the 744 active federal judgeships have been filled by the administration and the rest seem either intimidated or only too willing to do its bidding. (Tom Wicker, April 4, 1984, New York Times)

This alone shows the extent to which things have gone. It again demonstrates the profoundly political class character of the struggle which the government is conducting against the workers. Again it must be stressed that one should not be misled by its legal form which is only an expression of the brutal political intervention of the capitalist state into the affairs of labor relations on behalf of the bosses.

Continental Air Lines was the first

Before we can examine what the union ought to do, we ought to keep in mind how all this originated in the recent period. It started when Continental Air Lines became the first large corporation to initiate bankruptcy proceedings against a union contract and get away with it. At the time the labor movement as a whole was not fully appraised of its significance, not fully awakened from a period of passivity engendered by the depth of the capitalist economic recession.

In addition, a Supreme Court decision in 1984 virtually went whole hog in upholding a company's right to invalidate a labor contract upon filing a petition for bankruptcy. This was in the infamous Bildisco decision.

When the trade union leadership finally awakened to its enormous meaning they initiated a campaign to prohibit the courts from entertaining petitions from corporations as a means to avoid union contracts. The campaign took on some steam, but as matters stood then the trade union movement was not strong enough and its legislative friends in Congress not firm enough to prohibit this unprecedented attempt by the ruling class to deliver a body blow to the labor movement.

The trade unions' aim was to sponsor legislation in 1984 that would prohibit the courts from legalizing bankruptcy petitions for the purpose of destroying labor contracts. But what Congress did after a series of rotten compromises with the more progressive wing in Congress was to enact a provision (Section 1113) which does permit the bankruptcy courts to pass on a company's petition to reject a collective bargaining agreement.

Instead of giving the company the right to cancel the agreement merely by filing a voluntary petition in bankruptcy, Section 1113 gives the court the discretion of "balancing the equities" between the union and the company and to decide whether to reject or continue a union contract. The company must show "through the most complete and reliable information" that modifications of the union contract are necessary to permit the company to "reorganize."

The bankruptcy court therefore has the power to either continue or reject a collective bargaining agreement, in accordance with certain other provisions, which are not necessary to deal with here.

Transform bankruptcy proceedings into political struggle

What then should the union do under these circumstances? It is hazardous to disregard the bankruptcy threat since the companies are continually bringing it up.

The strikers at the present time are incredibly firm and very clear about the situation from all accounts. But the union needs to put its case before the working-class public and the people generally and expose the lies and deception of the company.

If the union begins to view the bankruptcy proceeding as a continuing political struggle rather than just a legal process, it has certain options available to it which could strengthen the union's position before the broad working-class public and serve as a rallying point in mobilizing greater and greater mass support in its favor. In sum, it must try to transform the continuing legal process into a broad political forum to attack the company as well as the judge's decision and the bankruptcy legislation enacted in 1984 on the basis of which the company and the bankruptcy court seek to destroy labor's basic rights.

First of all the legislation (Section 1113) is patently unconstitutional. This the union should try to mightily drive home to the workers. Article 1, Section 8 of the Constitution only authorizes uniform—not one-sided, anti-labor, pro-company—legislation.

Just as importantly, this legislation strikes at the heart of the 14th Amendment which guarantees due process of law. That means a legally binding contract cannot just be invalidated. The sanctity of a legally binding contract is supposed to be one of the hallmarks of equality before the law.

Thus this reactionary Section 1113 has to be pilloried by the union as anti-labor and unconstitutional. The union must go beyond attacking the individual judge, which is of course indispensable. The union must attack the very idea that Congress has the authority to pass this legislation in the first place and that the compromises which the more progressive members of Congress tried to arrive at were futile in the face of a reactionary onslaught by the combined forces of the Reagan administration.

But there are still other options open to the union which it can utilize by broadening and widening the bankruptcy proceeding into a political struggle. Even under the bankruptcy law as it exists presently the union has some important vehicles for mounting an offensive against the company.

Union is principal creditor

The union is in point of law and of fact the principal creditor of the company. This could scarcely be denied by anybody. First, the union has 10,000 retired workers to whom the company owes literally millions of dollars—$600 million by one estimate—and other forms of deferred payment.

The union's standing as the principal creditor can also and should be deduced from the fact that the workers have a property right in their jobs. No operations can be or have been conducted by the company without the workers. Their labor is indispensable to the operation of the company.

This fact, so patently clear to anyone who has his or her eyes open, must be made a part of the bankruptcy proceedings, which we repeat is a political process.

Also, and very importantly even under the false and unconstitutional provisions of the bankruptcy act, the union as principal creditor has the right to be appointed as the trustee in bankruptcy, if bankruptcy is the route that the company seeks to travel.

Why should the union insist on its right to become a trustee in bankruptcy once the company has decided on this course? As a trustee in bankruptcy the union will under Section 1113 have the right to resume production. It has the right as a trustee "to operate the business" and reinstitute the union contract as it was agreed to between the company and the union.

This is what Section 1113 says. The only question is this: Should the union insist on its right to become a trustee in bankruptcy or should the appointment be left to big business elements?

The union has a right to be the trustee, particularly in this case because it is the principal creditor both in law and in fact. The union also has a more generalized right, which all workers have, to become a trustee because the jobs of the workers constitute an indispensable element in the operation of a company and by virtue of that fact alone is a principal creditor within the terms of the bankruptcy law.

Union can examine company's books

As a trustee the union has the right of subpoena. In this way it will not be confined to the swindle sheets presented by the company but can get the real situation of the company revealed. The union will not only be able to look more carefully at the books with its own auditors but to question management's dealings, look into the hidden assets, and evaluate the true character of its liquid assets, and more particularly of its hidden assets.

Demanding the right to become a trustee will enable it to expose that what lies behind the petition for bankruptcy is not an inability to meet and discharge debts but an attempt at destroying the workers' hard-earned rights under the union contract.

True, the bankruptcy proceeding is only one aspect of the overall struggle to mobilize the workers and the labor movement as a whole and its limitations must be clearly understood. Nevertheless if this turns out to be a protracted struggle between the company and the union and is a test of strength between the labor movement and the ruling class as a whole it should be dealt with accordingly. It should serve as a tool to mobilize the masses of workers.

The greatest struggle, of course, has to be to reach out beyond the legal proceedings. It also has to reach out beyond a purely economic struggle between the striking workers of Wheeling-Pittsburgh and the company.

The framework of the struggle must be broadened. The struggle must be elevated from the district level and dealt with from the national level. The union must redesign its negotiating position by broadening it into a public inquiry, converting it into a broad tribunal to inquire into the motivations and operations of the company.

Up until now it has been the company which has publicized its position with its vicious advertisements and company letters. The union has maintained a low profile, if one is to measure it by the dimensions of the struggle. This must now change.

The union has to turn its negotiating position into a broad public forum with the national leadership presenting its case in the principal cities of the country in order to attract the widest possible public attention. The union has at its disposal a mountain of arguments by which it can expose the vicious lies, fraud and deceit which the company is foisting upon the workers and the broad public.

Union must present its case to the public

In turning the negotiating process away from a small, exclusive area and into a **national** forum for presentation of the union's point of view, it can attract great attention. Sections of the capitalist media will be forced to take notice.

There is an important precedent for this with the auto union in its early years, which used precisely this tactic with remarkable success and skill. Open forums were used to expose what was happening in negotiations, to condemn and denounce the tactics of the company and use their non-appearance at negotiating sessions as a focal point.

The union can buttress its position by calling an emergency conference of the union to unfold its new, broader strategy. Millions of workers everywhere will be watching the outcome of this struggle and trying not only to understand the issues as they affect the steel workers but what it will signify for them. There are many millions of unorganized workers who feel tremendously insecure in light of the frenzied efforts of the employers to cut costs, modernize and reduce the workforce through more layoffs.

There is no question that the outcome of this strike may be of a decisive character. It only remains for the union to first understand that the strike cannot be conducted by the old, purely economic method of struggle. It cannot be conducted as only a struggle of some 8,200 workers, who can certainly take care of the picketlines and the other daily tasks of such a struggle while the union leadership negotiates with the company.

There is not a city nor a town in this country which does not use steel in one way or another whether it be for schools, bridges or highways. The steel workers can bring this fact home to all of the people in the country, especially the working class, once it mobilizes its strength.

There are $2 trillion worth of construction orders waiting for steel and other raw materials to rebuild the country's dilapidated highways, bridges, tunnels, not to speak of schools and housing, especially in the urban areas. The profit motive, that is, the greed of the bosses, has prevented the utilization of the immense industrial resources of the country in a rational and planned way for the good and welfare of the people.

The United Steel Workers, one of the truly great mass organizations in this country, can rise to this historic occasion. It has formidable material and human resources to hurl back the anti-labor offensive of the ruling class and set the company back on its heels. It can, with the help of the rest of the labor movement and in the spirit of solidarity, not only hurl back the anti-labor offensive but inaugurate a new era of militant labor resurgence which will be of immeasurable significance to the working class and all of the oppressed people of the country.

Can the USWA take over the mills and operate them?

AUGUST 5—The United Steel Workers union (USWA) has reached a fork in the road in its relations with the steel companies. Wheeling-Pittsburgh Steel Co. has declared war upon the *USWA by invoking the authority of the bank*ruptcy court to invalidate its collective bargaining contract with the union.

Earlier the principal steel companies that had been bargaining for more than two decades with the USWA as a coordinated group disbanded. The steel barons now want to bargain on an individual basis so as to undermine the solidarity of the workers and diminish the strength of the USWA as their collective bargaining agent.

The USWA is certainly capable of conducting a militant strike on the old pattern and can sit out the struggle "until hell freezes over." The Wheeling-Pittsburgh workers have demonstrated a remarkable degree of solidarity and determination and show every sign of holding out until they break the resistance of the company.

The USWA, however, can also cut a new avenue of struggle and open up an offensive against the company that would be far more favorable for the union. The union can do this by taking advantage of a new phenomenon which had not existed in its bargaining relations with the company before March 1985.

What is new is that the company filed for reorganization under Chapter 11 of the Bankruptcy Act. The company's motivation in doing this, of course, was quite apparent from the very beginning—to get the sanction of the court to invalidate its collective bargaining agreement with the union.

A fundamental change in relations between company and union

There are many ramifications to what seems a simple self-serving administrative act by the company—the filing of some court papers. In filing for bankruptcy, however, the company altered in a fundamental way its mutual relations with the union.

One elementary fact clearly stands out: the company's status as the sole and exclusive owner of its property has undergone a highly significant transformation. Now, as a result of its voluntary filing for reorganization in bankruptcy, it is a debtor or a "debtor-in-possession."

This is not merely a legalistic technicality. The company has lost its legal title to the property of the company. It is forced to describe itself in its own legal brief to the court as a debtor or a "debtor-in-possession."

Its position has not merely been reduced by a notch or eroded. The basic property relations between the company and the union have been altered in a fundamental way.

Under its new status, Wheeling-Pittsburgh has lost its original right to divest itself of or dispose of property. It no longer has the right to sell or purchase property in its own name. It is now a debtor.

One should remember that the whole purpose of Chapter 11, as its title ("Protection Against Creditors") clearly suggests, is to "protect the company from its creditors." It was presumably (so the company claims) in anticipation of a scramble of the creditors to seize all or part of the assets of the company, to dismember and liquidate it, that Wheeling-Pittsburgh filed for reorganization.

The filing of the reorganization papers by the company was meant as a preventive measure to forestall such a wild scramble by the creditors. However, to date there has been no effort by any of the creditors to do so. Nevertheless, by its own doing the company has set in motion a process by which the union can take a bold initiative which could immeasurably strengthen it in relation to the company.

Union is principal creditor

The company's action has opened the door wide for the USWA to intervene on a wholly progressive and practical basis strictly in the interest of the union and the workers.

As the situation has unfolded in the bankruptcy proceedings, the company has lost its status as the sole and exclusive owner of the properties. The union, on the other hand, has undergone a qualitative change in its relation to the company.

The union can now assert itself as a principal creditor, a position which is unassailable in light of the fact that the company owes the union in excess of $600 million in pension funds, wage deferrals and other unpaid benefits.

In rebuttal the company itself can only assert that the union's claim is somewhat excessive. But there is no question that it has become the principal creditor, far ahead of any of the other creditors, including the banks.

Since the plants are idle and not operating, the company cannot even claim to be in possession. Who is or can be in possession is now under consideration.

Core question: Who is owner?

Who is an owner and not an owner is the rock-bottom core issue in the struggle. The company itself, on page 7 of its legal brief to the bankruptcy court, now describes itself as follows:

"Perhaps the most eloquent demonstration of the financially stricken condition of the company is the very invocation of Chapter 11 protection (on April 16, 1985) involving the surrender of the company of its independence and ability to control its own destiny." (Page 7, company brief to bankruptcy court.)

By this one act of filing bankruptcy papers, the company has become a non-owner by losing its legal title and the union has become a de facto collective owner on behalf of the workers by virtue of its indisputable position as the principal creditor of the company.

It only remains for the union to validate its actual position in the new relationship between the company and the union. What the union has to do now is to merely assert its legal right and make the workers conscious of it.

Does the union have a legal right to validate its de facto position, that is, its actual relationship to the company arising out of the bankruptcy proceedings? Yes it does; this is what we demonstrated in our first article.

Legal proceedings conceal crisis in property relations

A reorganization or bankruptcy proceeding brings out what has been lying dormant and concealed. It brings to the surface a crisis in property relations. It is property relations which lie at the bottom of all social and political struggles, particularly in contemporary class society.

Because the steel company took the bankruptcy route to break the contract, the union can insist and has the right to become the trustee in bankruptcy, recall the workers and "resume to operate the business" on the basis of the original union contract.

The struggle between creditor and debtor is in substance a class struggle, either a struggle between divergent class groupings in the ruling class, or, as in this case, a struggle between the company and the union, between capital and labor, which are veiled by the legal judicial process as debtor and creditor.

In ancient times, before there was a modern working class, the struggle among various property owning groups took precisely that form. But what the union has to do in the computer age is to bring it clearly to the surface and bring out the real nature of the contending parties.

That will bring an awareness of the highest magnitude, not only a trade union consciousness but a political consciousness, to the workers as to what and how the real struggle should be conducted.

The company having lost its sole and exclusive right to ownership, it is no longer in truth the owner of the means of production, an enormously significant fact which emerges as a result of the bankruptcy proceeding. The union can now insist on this very role.

Union's right to be trustee

But does the union have a legal basis to do this? Yes. The union has the legal right to become the trustee in bankruptcy.

What is a trustee in bankruptcy? It is a person or group of persons that a court must appoint to take charge of the affairs of the company because it has filed for bankruptcy or reorganization.

The trustee's duties and obligations in a case like this would be to operate and run the business. Once the union became the trustee it would have the right to recall the workers and begin to operate the business on the basis of the original union contract.

The union and the workers would then be in control of the company as a matter of legal right. It would not be a jointly run business. The union and the workers would have the exclusive right to operate and run the company.

But how can the union effectuate this initiative? It can do so by utilizing the same judicial process that the company has seized upon, but in order to enforce rather than invalidate the union contract as the company desires.

This is sanctioned by Section 1113 of the Bankruptcy Act under which the union can apply to become the trustee, as was detailed in our earlier article. Also the union has a right under Section 1104 of the bankruptcy code as "a party in interest" to get itself appointed as trustee. This was even admitted by an anti-labor bankruptcy judge sitting in New York in 1984 who handled the Carey Transportation bankruptcy proceedings. Unfortunately the union, Local 807 IBT, did not avail itself of this opening.

In this case the judge said that the union was a "party in interest" and therefore had a right to "apply for appointment as a trustee or examiner under Section 1104."

Another phenomenon: The emergence of the bankers

Now we can proceed further to deal with another newly emergent phenomenon in USWA negotiations with the steel barons. It concerns the role of the bankers. Some of the leading financial institutions involved are, among others, Manufacturers Hanover Trust, Chemical Bank and Wells Fargo Bank, as well as Prudential and Mitsubishi.

The bankers have always had a key role in the steel industry's economic, industrial and financial setup, as they do in other industries. However, in the past quarter of a century, indeed ever since the USWA was founded, the bankers have had a low profile, seemingly obscure, always in the background, rarely if ever intruding themselves into the negotiating process with the union.

Since the economic crisis of the 1980s, the bankers have become more and more prominent in the steel industry. It would be no exaggeration to say that in the present context the USWA to a large extent is really negotiating with the bankers.

The most immediate and pressing concern is that the company will try to undermine the union's position as trustee in reorganization by pledging the assets of the company, that is, the physical plant, real estate, securities and so on, to the bankers. This should not be surprising. The issue of pledging the company's assets to the banks has been under discussion between the union and the company since early spring.

At that time Dennis Carney, the chairman and chief executive officer of Wheeling-Pittsburgh Steel, promised that the company would not do that. As a matter of fact, he is quoted in the union's legal brief to the bankruptcy court as having told the union negotiators, in particular USWA District 23 Director Paul Rusen, that Bethlehem Steel as well as Republic Steel made a big mistake when they pledged their assets to the banks.

But Carney has made many promises to the union which have not been carried out. This is one that has to be carefully watched. It could have far-reaching significance in attempting to jettison the union's opportunity to become the trustee in reorganization so as to operate the plant on behalf of the workers and reinstitute the collective bargaining agreement as it was before the strike.

As practically all of the union members know by this time, the union is the principal creditor of the company. The company is indebted to the union to the tune of perhaps $600 million. Even if this is regarded as an excessive estimate, the indebtedness to the union as a result of pension fund and wage deferrals is so preponderant that it is impossible to deny that the union in this situation is the principal creditor.

Up until now, throughout the whole negotiating process and period of reorganization, it was the other creditors, primarily the banks, that were considered to be the principal creditors. But if the union is willing to open up an offensive against the company, if the union is seeking a new arena of struggle against the steel barons, it can avail itself of Section 1113 and take its rights as a principal creditor.

The bankruptcy code clearly states that the court must deal with this "equitably" and give it due consideration. The union has the greatest stake both in a financial and a general way because the workers have a property right to their jobs and are indispensable to production.

The banks, however, have been pressing (really bludgeoning) the company to pledge its assets to them because of the company's indebtedness to the banks. The banks are saying that they will make some concessions to the company, but only if the union makes them first, and then more and more of them, which to date have not satisfied the bankers.

By trying to get the company to pledge its assets, the banks are seeking to seize the company and establish themselves or one of their nominees as trustee in bankruptcy. In this way they hope to upstage the union in the struggle as the principal creditor.

Union has become de facto owner of the means of production

The banks fear that since the company has lost legal title to its properties—the plants, real estate, facilities and securities—the union as the principal creditor has now become the de facto owner. The company having lost its exclusive role as owner, the union now can proceed to become the legal successor in interest to the company, in other words, the trustee in reorganization, and operate the plant for the benefit of the workers.

So now the struggle is in reality not between the managerial staff, including the executive officers and so forth, and the union. It is between the banks and the union. The company has lost legal control over its destiny, as it has admitted. It has surrendered its title. It can't divest, purchase or sell or in any other way dispose of its properties. *Everything is in limbo.*

It is a transitional stage in the struggle between capital and labor, with the bankruptcy proceedings acting as a legal cover for what is in fact a political struggle between two class camps.

The traditional relations between capital and labor in contemporary class society have become unhinged as a result of the bankruptcy proceedings, whereby the former owners have become nonowners. And the former nonowner, the union, as a result of being the principal creditor, has become the de facto owner and can assert its legal right to operation and ownership of the plant and equipment as the legitimate successor in interest to the company, as a trustee in bankruptcy.

And the company knows that the union has this right.

Usually in these bankruptcy proceedings the company bombards the union with cartons of financial data and material to bolster its case of being in a "financially stricken condition" in order to extort more concessions from the union. However, in this case the company has pointedly refused to make available to the union the financial data which is essential for it to make an appraisal of the actual financial and economic condition of the company.

With a view to analyzing the company's financial and economic situation, the union hired two sets of experts: a nationally prominent accounting firm, Arthur Young & Co., and also an investment banking adviser, Lazard Freres. The data that these experts required to make the necessary appraisal and analysis were denied by the company.

Both these two sets of experts testified that in the many reorganization proceedings they have handled on behalf of companies, the creditors were always able to get from the company all the pertinent and relevant material in order to be able to properly and accurately assess the true condition of the company.

Section 1113 makes it mandatory for the company to surrender all relevant data required by a creditor to make an appraisal of the situation. It stands to reason that if a creditor's investment is endangered by the company's reorganization or bankruptcy proceedings, it is entitled to examine the company's books.

Wheeling-Pittsburgh's defiant violation of this statutory obligation demonstrates the company's fear that the data would reveal its true condition and moreover that the union would be able to successfully undertake the operation of the company on behalf of the workers.

A political struggle between two classes

The bankruptcy proceedings, therefore, are a political struggle, a contest between the union and the banks not merely over who has a greater legal right over the company assets but who will operate the plant.

Under the production relations existing in contemporary society there are only two basic classes involved in the process of production. First of all there are the workers, who are indispensable to production and without whom the plants cannot operate. Then there are, of course, the bosses, who own the plant and have been historically involved in the productive process through their agents and the managerial staffs as supervisors.

The bankers are not really involved in the productive process at all. They are and have been a passive parasitic element that live off the fruit of the labor of the workers. They have no economic function in the production process.

The company officialdom of Wheeling-Pittsburgh, as owners, had a role in the productive process. Now that they have lost not only the legal title but the right to own and dispose of the property, it leaves only the union, as the collective representative of the workers, to be the real successor in interest to the company as owners.

Thus under a legal umbrella two creditors, the union and the banks, are struggling for legal control as to who would be the trustee over the company. It is in truth a struggle between labor, on the one hand, and parasitical finance capital, which has no role, no economic function, in the process of production.

This is what has to be understood. The bankruptcy proceedings are merely a legal forum under which a struggle is taking place between the union and the bankers, who have no legal title to the plants. The union's effort should be directed to obstruct every effort of the banks, or their willing agents, the company officialdom to aid the banks.

Bring consciousness to the workers

The workers have the right to and can operate the plants. This can only be done, however, if the workers are made aware of their rights.

Political awareness is the problem. The principal task of the union must be to bring to the workers consciousness of their real role in the struggle: that they have every right to take over the plants and operate them on their own behalf.

Under no circumstances should this proposal be confused with the so-called ESOPs (Employee Stock Ownership Plans). These are nothing but company ripoffs, calculated to raise money for management, save them huge sums in taxes while inflicting layoffs and wage cuts on the workers. Even Business Week, the organ of big business and high finance, admitted that these schemes end up as "bad deals for the workers" in an article with the expressive title, "Revolution or Ripoff?" (April 15, 1985).

That is so because management, the bosses, under cover of a variety of schemes, never really relinquish their legal ownership and title. These ESOPs are just a manipulation by the same corporate management which controlled the company in the first place. They hold all the strings through a variety of stocks, bonds, convertible debentures or other financial corporate instrumentalities.

But the proposal that arises in the Wheeling-Pittsburgh Steel situation is one where a **legitimate union** takes over ownership and control on behalf of the workers to the exclusion of the bosses, who have **surrendered** their legal rights. The union and the workers are the successors in interest or trustee, to utilize the legal phraseology covering the de facto situation of the union and the workers.

Right of workers to occupy the plants

By provoking the strike, the company has idled the plants and emptied them of all operating personnel. But since the company is no longer the sole and exclusive owner and has "surrendered control," the union now has the option of occupying the plants in order to secure and safeguard their vested rights as explained above.

How and under what circumstances an occupation would take place should be a topic of intense discussion in the ranks and leadership of the union. If anything can force a public recognition of the importance and significance of Wheeling-Pittsburgh's union-busting strategy, this would.

An occupation of the plants would make the struggle a truly national, perhaps even international, question. All workers, not only the steel workers, would see how vital the Wheeling-Pittsburgh strike is to the interests of all the working class.

Local unions should now consider passing resolutions urging the international to adopt this avenue of struggle. The union leadership can do so by convening a leadership conference in which it gives a clearly persuasive exposition of its new initiative. It can then publicize it not only among its members but to the broad public.

This would have an electrifying effect among the workers, especially if the union utilizes its formidable human and material resources to put its case against Wheeling-Pittsburgh before the broad public. There is not a city or town in the U.S. which would not look up and listen to this bold, encouraging new approach against the avaricious designs of the banks and the steel barons. It cannot but be a tremendously encouraging prospect not only for the steel workers but for all of the working class and the oppressed masses in this country.

The workers' right to occupy the mills

AUGUST 12—There is absolutely no way to avoid the fundamental issues posed by Wheeling-Pittsburgh Steel Corp.'s filing for bankruptcy in order to break its collective bargaining agreement with the United Steel Workers union (USWA).

The union and the workers are face to face with a great historic choice. The union can go along the way it is now, defensively reacting to each new assault by the company. Or it can cut away, chart out a new path for itself in the interest of the workers.

In reality the choice is between accommodation and militant struggle. The former has proven itself to be thoroughly disastrous. It has meant three wage concessions in a row, and more are now to come.

Take what happened on Aug. 6. The union went to the same bankruptcy court with the same judge (Judge Bentz), in an attempt to get the company to pay a $1.8 million medical insurance premium for the workers. In a move which can only be described as downright impudence and contempt, Judge Bentz issued a one-line directive denying the union's request.

Imagine this judge issuing a one-liner dismissing the union's claim and then saying he will explain why sometime later!

The judge did this notwithstanding that the union stated that it would reimburse the company once the workers went back to work. Would the management of any company treat a principal creditor asking for a small advance in the same way were it not for the strike provoked by the company? The $1.8 million involved in this case is a mere pittance of the aggregate debt that the company owes to the union, which is around $600 million.

Now, to add insult to injury, the bankruptcy judge is entertaining a motion by the company's lawyers which requests that the court restrain the unemployment compensation authorities in the states of Ohio, West Virginia and Pennsylvania from processing unemployment insurance claims by the workers who were forced out of their jobs by the actions of the company.

Urgent that union take new direction

To all this the union has reacted defensively. Every passing day makes it more urgent that the union take concrete steps in a new direction.

The new direction is for the union and the workers to complete the process begun by the company and to move from being the principal creditor, that is, the de facto owner of the company, to taking possession and occupying the mills.

The company surrendered its legal title of ownership when it filed for bankruptcy. And the union, because it is the principal creditor, succeeded to that right and can justly claim to be trustee in bankruptcy, can recall the workers to take possession and occupy the plants as the new sole and exclusive owners and can let the company and bankruptcy judge take it from there.

When the company filed for bankruptcy and voluntarily stripped itself of its legal title, it created an inevitable void in the relationship between the union and the workers on the one hand and the company on the other. This left the matter in a perilous situation.

Either the workers and the union take concrete steps to perfect their de facto ownership by possession and occupation of the plants or the union's newly acquired rights will steadily wither away under the continual assaults of the company. This was witnessed just the other day with the attack on medical expenses and unemployment compensation, and now there is also an attempt to foist an anti-labor injunction upon the workers at one of the Wheeling-Pittsburgh mills.

This separation of ownership from possession cannot long exist. It will be resolved one way or another, but the workers and the union definitely have the upper hand and their legal right to it is unassailable.

Taking possession of mills is legally necessary

The question of possession is critical to the success of the strike. The legal basis for the union's and the workers' right of possession to effectuate ownership is clear and beyond doubt. This right was most authoritatively expounded over many years in leading cases and particularly by former Justice Oliver Wendell Holmes (1841-1935).

Holmes, one of the most prominent of the U.S. Supreme Court justices whose court decisions and essays on the nature of ownership and possession are probably more referred to than any other, said, "To gain possession, one must stand in a certain physical relation to the objects [the plants in our case] and must have a certain intent. These relations and this intent [must be] **overtly manifested.**

"The consequences attached to possession are as truly rights as those attached to ownership and/or contract." (Pages 177-178, "The Formative Essays of Justice Holmes," compiled by Frederick Rogers Kellogg. Our emphasis.)

But where do we start this process? Who makes the first move and under what conditions?

A great deal rides on the readiness, willingness and ability of the many local leaders, committee people, the bargaining units, grievance people and rank and filers to patiently and forcefully explain to the membership their

Workers in Detroit's Cadillac plant read papers during sit-down strike in 1937.

The question of possession is critical to the success of the strike. Either the workers and the union take concrete steps to defend their de facto ownership by possession and occupation of the mills or the union's newly acquired rights will steadily wither away under the continual assaults of the company.

rights, their new status as de facto owners and their legal right to occupy the plants as a matter of self defense against the increasing aggressiveness and encroachments of the company in their illegal attempt to cancel the union contract by utilizing the bankruptcy court.

Lessons of the GM occupation in the 1930s

Here, a great historical experience of workers in the U.S. is both relevant and enlightening on what to do. It is the great occupation of General Motors (GM) by the workers in the 1930s.

This militant action rocked the country, fired the imagination of millions and determined the course of labor history for years to come. It would be foolish, of course, to take this action as a literal example. One must regard it as only a bare outline and guide.

How did the occupation start? Historians and scholars will always be at odds at just how precisely it started, but that it did and succeeded *all* the world knows. There are some analogous factors which can be utilized to great advantage.

At that time the National Labor Relations Act was already in existence and the workers had a right to organize and strike. But the company, the courts and a vast horde of public officials were opposed to it and denied the right of the workers even though this right was very clearly and unambiguously stated in Section 7a of the NLRA.

Workers had seen how police and state troopers attacked strikers on a picketline. Fear of the power of General Motors, then as now the largest manufacturer in the world, inhibited the workers from taking to the picketline. So by discussion they tried to accomplish the same thing in another way.

In the weeks and months before the auto workers occupied the GM plants, there were many public officials and community leaders who met with union leaders and many promises were made to the workers but nothing came of all this. However, when the workers finally made a break for it and occupied the plants, then-Governor Frank Murphy became one of the central figures to mediate the situation.

Interestingly, President Roosevelt's Secretary of Labor at that time, Frances Perkins, defended the right of the workers to occupy the plants. She did so, not before the occupation but toward the end of it. She said that the workers have a property right because of their jobs. And that is correct.

We all know how the occupation at GM ended—with a victory for the workers. "But how does that stack up with our situation?" a Wheeling-Pittsburgh Steel worker may well ask.

Similarities with today's struggle

Substantially, some of the same elements which existed before the occupation of the GM plants exist now in the Wheeling-Pittsburgh strike.

For instance on Aug. 7, United Steel Workers President Lynn Williams met with several Pennsylvania congresspeople, most of whom come from districts in Aliquippa, Duquesne and other steel areas. The Wheeling-Pittsburgh strike was discussed among other issues such as long-term plans to revive the steel area, and once again, Japanese imports were mulled over.

All this may be well and good, but it is of no significant help to the Wheeling-Pittsburgh strikers at this time.

The same applies to an earlier meeting between union officials and the mediators from the U.S. Mediation and Conciliation Service, Robert Householder and Carmon Newell.

Of the same cloth is a projected meeting between union officials and the governors of West Virginia (Arch Moore), Ohio (Richard Celeste) and Pennsylvania (Richard Thornburgh). Also there could and should be meetings between the union officials and such well-known Senators as Howard Metzenbaum of Ohio and Jay Rockefeller of West Virginia (who incidentally participated in an early session of bargaining between the union and the company before the strike).

All these meetings with public officials and community leaders should be encouraged and utilized as a public forum to rally mass support and present the position of the union. But it can at best have marginal, peripheral and auxiliary significance and cannot be of any decisive help in bringing the struggle of the Wheeling-Pittsburgh strikers to a successful conclusion.

Only the workers and the union can do this. By taking possession and occupying the plants they will show to the company, to the court and to the whole world that they understand their rights, that they are nobody's fools, that no matter how complex and complicated their relationship has grown as a result of the bankruptcy, they know what to do and have done it.

Hold union meetings to explain workers' position

It may take a period of time for the local leaders to carefully disseminate literature explaining the position of the workers and the union and to try exhaustively to explain at union meetings with all the necessary patience but with determination and enthusiasm.

The union and the workers must not allow the situation to deteriorate. Consideration of these grave issues, which really are a matter of life and death and concern the most vital interests of the workers, must not be allowed to be confined merely to the top echelons of the union and the company. Awareness of the union's real strength and full knowledge of the facts and circumstances surrounding the case will raise the union consciousness of the membership. Knowledge becomes a powerful lever in the hands of the workers to batter down the resistance of the company.

That ancient Greek thinker and scientist, Archimedes, said it first and he was right on target. You could call him, if you will, the first labor strategist. "Give me a lever long enough," he said, "and I will move the world."

Archimedes was explaining the mechanical principle of leverage. The Wheeling-Pittsburgh strikers have such a lever in the right to occupy the plants. By the use of this lever, they can exert incredible pressure upon the company, the court and the politicians.

Once they have done that, there will be any number of benevolent public figures, politicians of all types from local community leaders to governors, who will address themselves to the question. It is in the use of this lever that the workers can dramatize and publicize their rights and draw national support not only from other steel workers and other unions but from the mass of the people as a whole.

The tactics of the workers and their strategic perspective can be summed up this way: Whoever wills the objective—the objective of winning the struggle of the workers—must also will the means thereto.



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