Consumer Reports' nice liberals just happen to be union-busters

By Daniel Lazare

NEW YORK

Everyone expects right-wing businessmen to break unions. But what happens when good progressives, the kind of nice people who care about poverty and homelessness and keeping consumers well-informed, try to break unions as well?

This is the question confronting 180 employees of Consumers Union (CU), publishers of the monthly magazine *Consumer Reports*. The company has been waging a war of attrition against its union, The Newspaper Guild, since the mid-'70s. In 1980, Consumers Union shut down its subscription-processing division and fired 167 workers, causing the labor union to lose half its strength. In 1984, it provoked a three-month strike when it demanded that the Guild give up key jurisdictional language in its contract limiting the kind of work managers and non-union outsiders could perform. Victorious in that particular struggle, management demanded at the next round of contract talks that half of Guild members' next wage increase be set aside in the form of a "merit pool" for management to dole out in raises only to individual employees it deems deserving.

The suit doesn't fit: Finally, late last year, Consumers Union slapped two Guild leaders with a lawsuit because of letters they wrote to Consumers Union members apprising them of the anti-union campaign, and because someone—no one is quite willing to say who—posted a confidential list of management salary increases on a Guild bulletin board at a time when union members hadn't seen a raise in nearly two years. A management spokesman said the letters constituted an invasion of privacy and misappropriation of confidential information. But a Guild attorney labelled the suit, which names the two union members but not the Guild, an effort to separate employees from their unions and "bully two working stiffs through the courts."

"It's designed to chill them in the exercise of union rights guaranteed them under the law," said the attorney, Irwin Bluestein. "I've represented labor unions for 17 years now and I've never seen anything like this."

All this from a non-profit magazine that not only tells you which mattress retains its spring longest and which car has the best service record, but rails against deceptive advertising practices and runs concerned, hard-hitting articles about AIDS and the plight of the working poor. Although Consumers Union began with seed money from organized labor during the Depression, the AFL-CIO now has the magazine on its boycott list alongside such notorious union-busters as Armour meat and California table-grape growers. CU employees, meanwhile, have launched a publicity campaign that outlines, as one Guild communication put it, "the hypocrisy of an organization that publishes [socially-conscious material]...on one hand and squeezes its own employees on the other." Around Consumers Union's headquarters—an imposing pre-World War I optics factory in Mt. Vernon, N.Y.—employees picket, wear red-and-white buttons reading "Don't Buy Consumer Reports" and wonder when, if ever, they will get their next contract.

"Morale stinks," said one employee. "People feel betrayed, betrayed by management." Added Michael Echols, a senior editor and long-time Guild activist: "I used to think I'd be at this job until I died at my desk at age 80 on a weekend. Now I would just like to get out."

Merit pay's lack of merit: The Guild objects to the merit-pay proposal because it would lead to inequities and deprive the union of its most basic function, bargaining for wages. The Guild also points out that there is nothing in its contract to prevent Consumers Union from rewarding individual employees over and above the salary scale it negotiates with the Guild. The real issue, the Guild believes, is not merit pay or union jurisdiction, but management's long-term strategy to tame a once-powerful labor organization.

"I think the goal is to gain total control over the organization," said Gordon Hard, the vice chair of the Guild unit. "I think the aim is not to make the union disappear but to render it toothless."

The struggle at Consumers Union is ironic, primarily because CU itself was born of a strike against an organization known as Consumers Research in 1936. When the workers found themselves locked out and fired, they decided to launch their own publication with a financial assist from friendly unions. Consumers Union's original charter was expressly pro-labor: not only was the new organization to educate consumers, but it was "to seek a decent standard of living" for them as well. However innocuous its ratings of computers and toasters may seem today, Consumers Union and its employees' union, District 65 of Distribution Workers of America (now affiliated with the United Auto Workers), actually made it onto the House UnAmerican Activities Committee's list of subversive organizations in the early '50s. For political protection, the workers eventually voted out District 65 and affiliated with the more conservative, anti-Communist Newspaper Guild instead.

A bit of that old political coloration still lingers around Consumers Union's upper echelons—but only a bit. Besides the articles on AIDS and the working poor, the company recently sponsored a conference on the poor in Washington and published a book-length photo essay of life below the poverty line. Consumers Union's board of directors includes such prominent consumer-movement figures as NBC-TV's Betty Furness, Public Citizen's Joan Claybrook and Clarence Ditlow of the Center for Auto Safety. The board also has a sprinkling of liberals from the world of politics—former Texas State Sen. Lloyd Doggett who ran unsuccessfully for U.S. Senate against Republican Phil Gramm; Rosemary Pooler, a Democratic candidate for Congress from Syracuse, N.Y.; and James A. Guest, former secretary of state to Vermont Gov. Madeleine Kunin and now a Democratic candidate for Vermont's sole congressional seat.

Not one board member has spoken out against Consumers Union's war on The Guild. "I don't have a union background; I'm just an auto-safety individual," explained Clarence Ditlow. "...I don't know what union-busting is, and I don't think it's happening at Consumers Union.... The [Guild] has given talks at board meetings, but that's it, there's really been no discussion of the union's position." Other board members refused to comment, referring all questions to James Guest, the board president. Guest, a protege of Sen. Edward Kennedy (D-MA), recently angered organized labor when he came out against raising the minimum wage and a law requiring advance notice for factory closings. He refused to comment as well.

A New-Right Old Leftist? But the person who best sums up Consumers Union's odyssey from the working-class left to anti-labor liberalism is its $147,000-a-year executive director, Rhoda Karpatkin. An attorney, the 57-year-old Karpatkin is known to wax nostalgic about the Spanish Republic. Her late husband, Marvin, who died in 1975, served as American Civil Liberties Union counsel and defended draft resisters during the Vietnam War. A daughter, Deborah, is a former staff attorney with the New Jersey Civil Liberties Union, while a son, Jeremy, is the former youth organizer for the Democratic Socialists of America and now heads up Paul Simon's presidential campaign in New York. Colleagues say Rhoda Karpatkin is dedicated and hard-working, takes a keen personal interest in the plight of the homeless, and, they add, is fundamentally intolerant of dissent.

"I think what she wants is something like the style of management in a law firm where the partners are the productive employees and everyone else are service personnel tending and grooming the partners," said The Guild's Michael Echols. "She's the type of person who simply cannot adjust to a truly collegial approach where low-level people help decide what to say."

Hence the war on The Guild. Although Consumers Union experienced some hard times in the '70s and early '80s, money, in view of last year's record $7-million "surplus," is no longer a problem. Rather, the problem, according to one employee, is that "it's a hard time for unions, and nobody seems to give a shit anymore if a union gets busted"—least of all liberals. □

Daniel Lazare writes regularly for *In These Times*. He is a former official of the New York Newspaper Guild.

INSIDE STORY

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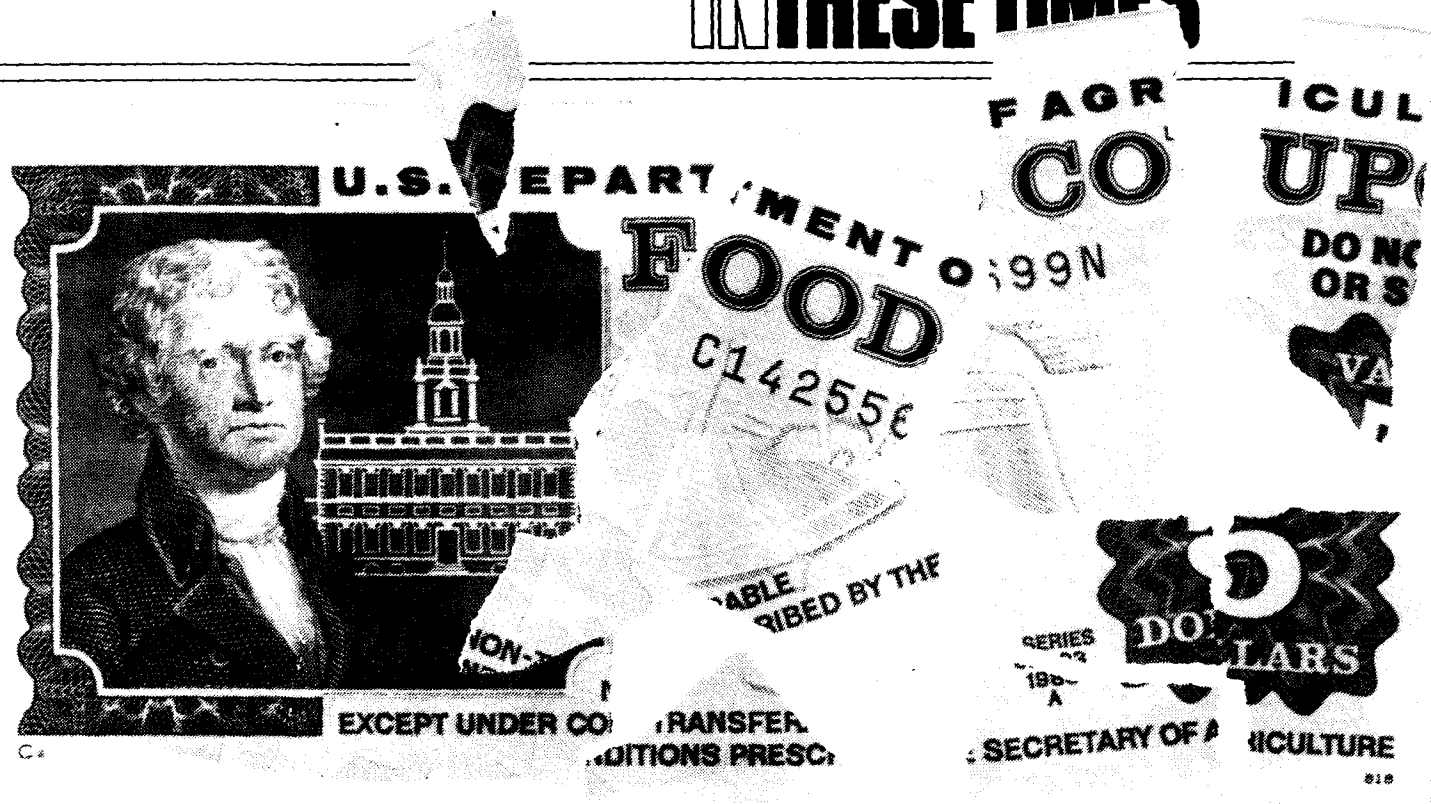
(ISSN 0160-5992)

Published 41 times a year: weekly except the first week of January, first week of March, last week of November, last week of December; bi-weekly in June through the first week in September by Institute for Public Affairs, 1300 W. Belmont, Chicago, IL 60657, (312) 472-5700.

Second-class postage paid at Chicago, IL, and at additional mailing offices. Postmaster: Send address changes to *In These Times*, 1912 Debs Ave., Mt. Morris, IL 61054. This issue (Vol. 12, No. 19) published April 6, 1988, for newsstand sales April 6-12, 1988.



Court helps ensure poor workers won't strike

By David Moberg

IF THE MORAL CHARACTER OF A SOCIETY'S GOVerning bodies is tested in how they treat the most vulnerable members of that society, the U.S. Supreme Court flunked again.

By a 5-3 majority the court decided that Congress did not act unconstitutionally in 1981 when it prohibited providing food stamps for a striker and his or her family, even though the striker met all other conditions for getting the stamps—that is, sufficiently poor and willing to work. Effectively, the court said that Congress could penalize families, even small children, if an adult worker exercised his or her federally protected rights to collective action, even against illegal actions of an employer.

Of course, the court majority didn't see things quite this way. In the March 23 opinion overturning a district court decision in favor of the United Auto Workers' (UAW) challenge to the law, Justice Byron White argued that only in "isolated" and "exceedingly unlikely" instances would workers' rights to association or speech be threatened by this penalty. The Constitution does not require providing funds, White wrote, "to maximize the exercise of the right of association or to minimize any resulting economic hardship."

Everyone agreed that only a small number of strikers have ever gotten food stamps—about 4 to 11 percent of strikers, according to a Government Accounting Office study, or about .2 percent of all households getting food stamps that were not on public aid. Of course, that admission weakens the court majority argument that Congress was rationally and legitimately acting simply to save public funds.

But the people affected are the most vulnerable, workers who are already near poverty and comparatively powerless to press their claims against employers. "This decision...makes it very difficult for low-paid workers," said University of Pennsylvania law professor Clyde Summers. "It hits the poorest segments of society in a most brutal, inhuman way," legitimizing employers starving a worker's children to win a labor dispute.

Unmeaningful rights: It would be easy to argue that rights to association and speech become abstract and hollow for people who for economic reasons can't exercise those rights, or when real world inequality makes a mockery of competing rights. The court obviously is unsympathetic to that view, but the record on this point is mixed. In a long series of cases in recent decades the court has decided that poor people must be provided defense counsel and can't be denied transcripts of their trials just because they're indigent. Those cases implicitly say that subsidies are sometimes necessary for rights to be meaningful.

In a different vein, Congress explicitly said in the landmark New Deal labor legislation of the '30s that individual workers were powerless to confront their employers unless they were organized. Congress clearly stated a public policy in favor of collective bargaining, giving legislative support to make workers' individual rights meaningful. Also, the New Deal legislation explicitly protected collective action, which, unlike individual rights, has at best fuzzy protection under the Bill of Rights.

"This decision...hits the poorest segments of society in a most brutal, inhuman way," says one legal expert.

But the question of redressing economic and social inequality to protect rights is not really at issue in this case, although the majority decision makes it appear so. The issue raised by the 1981 legislation was the constitutionality of a congressional penalty on strikers, not of any special funding for strikers. "The [Supreme Court] majority magically transformed a clear penalty into a subsidy," argued American Civil Liberties Union (ACLU) associate legal director Helen Hershkoff, who backed the UAW lawsuit. "The question is whether the government can use taxing and spending powers to buy up the Bill of Rights."

It was clear from a long legislative history before 1981, during which cutoff of food stamps for strikers was frequently rejected, that conservative lawmakers wanted the cutoff to punish strikers. For example, under current law, if a worker quits his employer for "good cause" and takes another, lower-paying job, he may qualify for food stamps. But if another worker strikes over the same good cause, takes a low-paying job and meets all qualifications, he cannot get food stamps.

The central challenge: This kind of discrimination in a federal, needs-based program violates the constitutional requirement of equal protection under the law and impermissibly forces workers to give up their association with the union or strike in order to get benefits to which they should be entitled, the UAW and ACLU argued. The court had decided in the past that states could either deny or grant unemployment benefits to strikers. Only a few states provide such benefits and some deny unemployment benefits to locked-out workers or workers idled indirectly because of any labor dispute. But in those cases, benefits were triggered simply by the strike, not a legal standard of need, and were directly funded by employers. Whatever one thinks about unemployment benefits for strikers, those cases are clearly different from food stamps.

But the majority basically ignored the central challenge of discriminatory treatment and even admitted that "it would be difficult to deny that this statute works at least some discrimination against strikers and their households." (Strikers previously receiving food stamps can continue to get the same amount but no increase due to greater need.) It accepted the Reagan administration's argument that Congress was acting simply to save money and to avoid "undue favoritism in private labor disputes."

In many ways, the heart of the majority decision is this acceptance of Congress' decision about how to be "neutral." But as Justice Thurgood Marshall argued in his dissent (joined by Justices Harry Blackmun and William Brennan), "the 'neutrality' argument on its merits is both deceptive and deeply flawed." For example, supervisors or other management personnel who might be affected by a strike aren't prohibited from getting food stamps.

More important, Marshall argued, "individuals and businesses are connected to the government by a complex web of supports and incentives." Businesses may receive tax deductions (even for losses incurred during the strike), depreciation, tax credits, government contracts, protection from creditors under the Bankruptcy Act and direct subsidies (such as Small Business Administration loans or, in a case cited by the UAW, job training funds to train strikebreakers). None of those benefits requires that employers abstain from strikes. And even if workers initiate strikes, they are *often* pushed into it by their boss' actions, and in most cases have no other meaningful way of making their point. Strikes are thus not simple "voluntary" actions, argues James Atleson, law professor at the State University of New York.

"When viewed against the network of governmental support of both labor and management, the withdrawal of the single support of food stamps—a support critical to the continued life and health of an individual worker and his or her family—cannot be seen as a 'neutral' act," Marshall wrote. "Altering the backdrop of governmental support in this one-sided and devastating way amounts to a penalty on strikers, not neutrality.

Separate, not equal: "It's self-evident that denying benefits is not a neutral act," says Richard McHugh, the lead UAW attorney in the case. But McHugh and others argue that federal policy has never been and never can be neutral.

"Federal labor policy is not intended to be evenhanded," says historian and attorney Staughton Lynd. "It is intended to provide more equality [between workers and employers]. Even with the Wagner Act and other federal legislation, the employer is overwhelmingly more powerful. To fulfill the public purpose of putting workers on a basis of equality, you need more intervention, not less, on the side of workers. As long as workers have the right to strike once every two or three years and managers can close down the plant any day of the week, we're not within shouting distance of equality. The fundamental error of Supreme Court jurisprudence in labor law is the assumption of this equality once you have a union."

Government "neutrality" comes up as an issue in two different contexts, Summers argues. On whether or not there should be collective bargaining, the law isn't neutral—although the support has been eroded. Then there's the question of which weapons each side can use. "The law has never been neutral," he said. "It's been a mix. Wherever the balance was before, you change the balance. What we need to do is ask, 'Is the balance where we would like it?' I think we ought to move it in the direction of helping low-income workers."

In addition, as Northeastern University law professor Karl Klare says, the social and economic inequality that forms the background to any dispute is hardly a "neutral" fact of life. That inequality partly reflects decisions of courts and the legislature; indeed, the very foundations of the "private" economic system—from creation of corporations to protection of contracts and private property—are creations of the political and legal system.

"Neutrality" in this case is simply a convenient and misleading fiction to justify action to support the wealthy against the weak. □