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JUDICIAL ENFORCEMENT OF LABOR CONTRACTS AND EMPLOYMENT RIGHTS UNDER PENNSYLVANIA LAW

I. HERMAN STERN †

> "One of the main purposes of and reasons for a collective bargaining contract is to stabilize industrial relations and insure labor stability for the duration of the agreement, ..." [1]

IF THIS IS SO then an unenforceable collective bargaining agreement or "labor agreement", the terms of which the union or the employers can at whim treat as a mere scrap of paper, is a sure road to instability and chaos in day to day labor relations.[2] Effective methods of enforcing the labor contract is the order of the day. Pennsylvania law, both statutory and common law, today recognizes this need. THE PENNSYLVANIA RULES OF CIVIL PROCEDURE have been redrafted to permit actions *eo nomine* at law or in equity by or against unions[3]—a procedure which could not be maintained under prior practice. Pennsylvania courts have championed the preservation of a valid labor agreement and will enforce the duties and obligations assumed therein by the employer or the union,[4] as well as grant damages for losses sustained as a result of a breach or inducement of a breach of such collective agreement.[5]

Prior to a detailed analysis of the relevant Pennsylvania law, it is apropos to first review, in summary fashion, the historical developments and basic background necessary for a fuller appreciation of the subject matter.

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1. From the majority opinion by Mr. Justice Bell in Pennsylvania Labor Relations Bd. v. Fortier, 395 Pa. 247, 253, 150 A.2d 122, 125 (1959). Pennsylvania Labor Relations Board will hereinafter be cited as PLRB.

2. See Textile Workers Union v. Lincoln Mills, 353 U.S. 448, 454 (1957).

3. PA. STAT. ANN. tit. 12, appendix; Pa. R. Civ. P. 2151-2175 (1951). PA. STAT. ANN. will hereinafter be cited as — P.S., *i.e.,* the instant citation will read 12 P.S. appendix, Pa. R. Civ. P. 2151-2175.

4. Philadelphia Marine Trade Ass'n v. International Longshoremen's Ass'n, 382 Pa. 326, 115 A.2d 733, *cert. denied,* 350 U.S. 483 (1955); General Bldg. Contractors Ass'n v. Local 542, 370 Pa. 73, 87 A.2d 250 (1952).

5. Fountain Hill Underwear Mills v. Amalgamated Clothing Workers' Union, 393 Pa. 385, 143 A.2d 354 (1958).

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I.

STATUS OF LABOR UNIONS, COLLECTIVE BARGAINING, AND LABOR AGREEMENTS UNDER PENNSYLVANIA LAW.

Early Pennsylvania law dealt harshly with concerted activities by labor.[6] Much of this approach has been dissipated over the past century by the climate of the times as evidenced by legislative prescription and a judiciary more sympathetic to the legitimate goals and the present need for responsible concerted labor union activity.[7]

A. *Historical Development.*

The General Assembly of Pennsylvania (herein called "Legislature"), first enacted legislation in 1869[8] and in 1872[9] which recognized and legalized the right of a workingman to form and join labor unions. Nonetheless, the right to engage in and effectuate the fruits of collective bargaining was strongly curtailed by the courts. Courts of equity frequently decreed injunctive relief and courts of law freely granted judgment for damages arising from civil conspiracy. The early 1930's heralded a turn of events which marked an about-face on this score. The Legislature enacted a labor anti-injunction statute in 1931 which sharply limited the previous injunctive reach in labor disputes of the state equity courts.[10] Two years later, the Supreme Court of Pennsylvania in *Kirmse v. Adler*[11] announced a common-law public policy that the right of labor to engage in concert for its mutual aid and economic benefit is a protected activity. The *Kirmse* case then issued a caveat to the trial courts of Pennsylvania directing that "the strong arm of equity will not intervene unless the circumstances imperatively required it." [12]

6. The early Pennsylvania law in this respect is analyzed in detail in Stern, *Two Decades of Pennsylvania Law on Picketing in Industrial Disputes (1933-1954)*, 28 TEMP. L.Q. 50, 50-52 (1954).

7. In Grimaldi v. Local 9, Journeymen Barbers Int'l. Union, 397 Pa. 1, 10, 11, 153 A.2d 214, 218, 219 (1959), Mr. Justice Musmanno, speaking for the majority of the court, held "Without collective bargaining, employees could be at the mercy of an employer who refused to be guided by fundamental concepts in humanity and fair dealing. . . . Labor has come a long way since the era when the workman was practically looked upon as a serf of his master. The treatment of workmen in those years wrote a black page in the industrial history of mankind. Fortunately, that melancholy era is behind us. . . ."

8. Act of May 8, 1869, P.L. 1260, 43 P.S. 191.

9. Act of June 14, 1872, P.L. 1175, 43 P.S. 200.

10. Act of June 23, 1931, P.L. 926, 17 P.S. 1047, limiting ex parte injunctions and power of the court to issue equitable relief in labor disputes. This statute was held constitutional in Pennsylvania Anthracite Mining Co. v. Anthracite Miners of Pennsylvania, 318 Pa. 401, 178 Atl. 291 (1935).

11. 311 Pa. 78, 166 Atl. 566 (1933).

12. *Id.* at 83, 166 Atl. at 568.

B. *Pennsylvania Public Policy.*

Pennsylvania accords telling impact to legislative declarations of public policy.[13] The object to be attained by a Pennsylvania statute has been descriptively termed as its "authentic password" [14] and "the paramount objective of judicial statutory construction".[15] Two general labor statutes, enacted within one week during the 1937 legislative session, promulgated a public policy which encourages collective bargaining and the negotiation of labor agreements.

The Labor Relations Act of 1937, as amended[16] declares the following public policy in Section 2(c) of that statute:

> "In the interpretation and application of this act and otherwise, it is hereby declared to be the *public policy* of the State *to encourage the practice and procedure of collective bargaining* and to protect the exercise by workers of full freedom of association, self organization, and designation of representatives of their own choosing, *for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection,* free from the interference, restraint or coercion of their employers." (Emphasis added.)

An almost identical declaration of public policy is legislatively promulgated in the Labor Anti-Injunction Act of 1937, as amended.[17] Furthermore, it has previously been shown that since 1933 as a result of the *Kirmse v. Adler*[18] decision, the Pennsylvania common law is in complete harmony with these legislative declarations of public policy. Even if this were not so, and the Pennsylvania labor relations and anti-injunction statutes enacted in 1937 were found to be in derogation of the common law, such statutes would be liberally construed.[19]

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13. Act of May 28, 1937, PA. STAT. ANN. tit. 46, §§ 501-602 (1952). Commonwealth v. Emerick, 373 Pa. 388, 96 A.2d 370 (1953); Kane v. Policemen's Relief and Pension Fund, 336 Pa. 540, 9 A.2d 739 (1939).

14. Commonwealth v. Calio, 155 Pa. Super. 355, 38 A.2d 351 (1944).

15. Swartley v. Harris, 351 Pa. 116, 40 A.2d 409 (1944); Pocono Manor Ass'n v. Allen, 337 Pa. 442, 12 A.2d 32 (1940).

16. Act of June 1, 1937, P.L. 1168, No. 294, as amended, 43 P.S. 211.1-211.13.

17. Act of June 2, 1937, P.L. 1198, 43 P.S. 2b(a).

18. 311 Pa. 78, 166 Atl. 566 (1933).

19. According to the mandate of the Pennsylvania Statutory Construction Act enacted May 28, 1937 (except for a few expressly exempted items not material here) "The rule that laws in derogation of the common law will be strictly construed, shall have no application to the laws of this Commonwealth hereafter enacted" 46 P.S. 558. The Labor Relations Act and the Anti-Injunction Act were respectively enacted June 1, and June 2, 1937; see notes 16 and 17 *supra.* The date of enactment being several days subsequent to the enactment of the Statutory Construction Act, the public policy of the statutes will be liberally construed even if the policy, in fact, was in derogation of the common law previously in effect. A full exposition of this point is given in Stern, *The Background and Public Policy of Pennsylvania Law on Collective Bargaining Agreements — Unshackling the Hold of the Common Law,* 3 VILL. L. REV. 441 (1958).

Pennsylvania public policy mandates the encouragement and effectuation of collective bargaining agreements. The mandate of this public policy to the judiciary is that the Pennsylvania courts should approach this area in a sympathetic manner with the end goal of enforcement wherever possible within the framework of the law. With development during recent decades in the growth, status, and impact of labor unions, the judiciary would seem to be invited to blaze new trails leading to this end goal wherever the issue and facts present novel situations in this area.

II.

THE LEGAL THEORY OF THE LABOR CONTRACT UNDER PENNSYLVANIA LAW.

For many years in the past, there existed in Pennsylvania a vital issue as to whether or not the collective labor agreement was a contract of employment. Courts in the same county disagreed on this score.[20] This issue has been unequivocally resolved. A labor agreement is a trade agreement and not a contract of employment.[21]

The rules of law as to whether the labor agreement is valid and whether the terms of a labor agreement bind the individual employee in the proper bargaining unit by the union which represents a majority, are also definitely established. The answer to both queries is a resounding "YES". A union is the agent of its members and the terms of the labor contract which the union duly negotiates are binding on the member who is employed by the employer who consummated that agreement.[22] Majority rule is equally applicable to employer associations. Thus, the individual employer member is bound by the terms of a labor agreement consummated by the employer association.[23]

This scheme of enforceability is further shored up by Pennsylvania law which prevents the courts from enforcing either a so-called "yellow-dog contract" — and also renders unavailing in equity courts the argument of conspiracy under most circumstances where a labor

20. Kaplan v. Bagrier, 12 D. & C. 693 (Pa. 1929) in the Common Pleas Court No. 1 of Philadelphia County, held that a labor agreement was *not* a contract of employment; and Retail Cigar Employees Union v. Sun Ray Drug Co., 67 D. & C. 512 (Pa. 1949) in the Common Pleas Court No. 5 of Philadelphia County held that a labor agreement *was* a contract of employment.

21. Amalgamated Ass'n of St. Employees v. Pittsburgh Ry's. Co., 393 Pa. 219, 142 A.2d 734 (1958). The Pennsylvania theory, nature, form, and rules of construction of labor agreements are considered in detail in Stern, *Pennsylvania Law on the Nature and Theory of Collective Bargaining Agreements,* 32 TEMP. L. Q. 29, 49-52 (1958).

22. *Id.* at 52, 56.

23. Philadelphia Dress Joint Bd. v. Rosinsky, 134 F. Supp. 607 (E.D. Pa. 1955); Arbechesky v. Unemployment Compensation Bd. of Review, 174 Pa. Super. 217, 100 A.2d 396 (1953); Joint Bd. of Waist & Dressmakers Union v. Rosinsky, 173 Pa. Super. 303, 98 A.2d 447 (1953).

dispute is involved.[24] The Labor Anti-Injunction Act's proscriptions against equitable relief in a labor dispute, on the other hand, will not apply where there is a breach of a valid subsisting labor agreement and the action for enforcement is brought by a party who has not committed an unfair labor practice.[25]

III.

JURISDICTION OF THE PENNSYLVANIA COURTS.

A. *General Tests of Jurisdiction Over Subject Matter by The Pennsylvania Courts.*

Jurisdiction by the court over subject matter depends upon whether the court may ultimately decide the cause of action.[26] In the latter event, the court may enter upon an inquiry of the issue involved in the action, despite the possibility that the court may ultimately decide that it is not able to grant the prayer or judgment which the moving complainant has requested.[27] Pennsylvania courts have generally, and in labor cases have repeatedly, held that they will not accede jurisdiction over actions prematurely brought. Justiciability in labor cases involves actual legal hurt and not a contingency.[28]

B. *The Jurisdiction of Pennsylvania Courts and Federal Pre-emption.*

It is hornbook law today that Congress has the "plenary" power under the commerce clause of the federal constitution, to enact legislation regulating labor relations in enterprises in or affecting interstate commerce.[29] Where Congress has chosen to act in this area of labor law, the reign of federal supremacy more commonly called "federal pre-emption" is undisputed and supreme.[30] There are two federal general codes of labor which have significant impact in determining federal pre-emption: The Labor-Management Relations Act known as the

24. 43 P.S. 206e and 206f.
25. 43 P.S. 206d(a).
26. Main Cleaners and Dyers, Inc. v. Columbia Super Cleaners, Inc., 332 Pa. 71, 2 A.2d 750 (1938). *Accord,* Nippon Ki-Ito Kaisha, Ltd. v. Ewing-Thomas Corp. 313 Pa. 442, 170 Atl. 286 (1934). *Cf.* Sun Ship Employees Ass'n v. Industrial Union of Marine and Shipbuilding Workers, 351 Pa. 84, 40 A.2d 413 (1944).
27. *Ibid.*
28. Gavigan v. Bookbinders Union No. 97, 394 Pa. 400, 147 A.2d 147 (1959); McMenamin v. Philadelphia Transp. Co., 356 Pa. 88, 51 A.2d 702 (1947).
29. U. S. CONST. Art. 1, Section 8 grants Congress the power to ". . . regulate Commerce . . . among the several States. . . ." The plenary right to so regulate is upheld in NLRB v. Fainblatt, 306 U.S. 601 (1939); NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1 (1937).
30. Local 24, Int'l Brotherhood of Teamsters v. Oliver, 358 U.S. 283 (1958); Amalgamated Ass'n of St. Employees v. Wisconsin Employment Relations Bd., 340 U.S. 383 (1951); International Union of United Auto. Workers v. O'Brien, 339 U.S. 454 (1950); Hill v. Florida *ex rel* Watson, 325 U.S. 538 (1945).

"Taft-Hartley Act" [31] and the Labor Management Reporting and Disclosure Act of 1959 popularly known as and hereinafter called the "Labor Reform Act".[32] The Taft-Hartley Act, in its Title I and Title III respectively protects both public and private rights in labor relations affecting interstate commerce. The National Labor Relations Act as amended constitutes Title I of the Act and defines and regulates certain public rights. Title III of the Act defines and regulates certain private rights including, *inter alia,* suits by and against labor organizations and damages resulting from certain secondary boycott activities by labor unions.

Until the recent enactment of the federal Labor Reform Act federal pre-emption mandated that state labor boards and courts constitutionally were without jurisdiction over federally regulated matters affecting commerce. This was the rule even in those situations where the National Labor Relations Board refused jurisdiction by applying its self-imposed jurisdictional yardsticks[33] premised on grounds that jurisdiction will not effectuate the purposes of the act.[34] This resulted in what was popularly known as "no-man's land." The Labor Reform Act has eliminated the "no-man's land" area by a two pronged attack. First, this Act provides that the National Labor Relations Board may, as of old, expand its jurisdictional reach by expanding its dollar volume yardsticks; and the Board may continue its practice of declining jurisdiction over matters which do not "substantially" affect interstate commerce. Notwithstanding this Board power, however, the Labor Reform Act expressly provides that the Board must retain and may not decline jurisdiction over matters accepted by the Board on August 1, 1959. Secondly, where the Board has properly declined jurisdiction, state courts and administrative agencies may assert jurisdiction.[35] Thus, the vexing problem of "no-man's land" has been eliminated.

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31. 61 STAT. 136 (1947) as amended, 29 U.S.C. §§ 141-168 (1952).

32. The citation for this statute is yet unavailable. The bill was signed into law by President Eisenhower on September 14, 1959.

33. Guss v. Utah Labor Relations Bd., 353 U.S. 1 (1957); Amalgamated Meat Cutters, AFL v. Fairlawn Meats, Inc., 353 U.S. 20 (1957); San Diego Bldg. Trades v. Garmon, 353 U.S. 26 (1957).

34. *Ibid.* The Pennsylvania Labor Relations Board plaintively comments in its *Twenty-Second Annual Report for the Year Ending 1958,* at p. 3 of that Report, that: "The inevitable result of the Guss decisions was to expand the area of the 'no-man's land' with a resultant continuing decline in the number of new cases brought to the Board." A Pennsylvania case which expressly cites the *Guss* case (note 33 *supra*) with approval is Hodges Bedding Co. v. PLRB, 388 Pa. 333, 131 A.2d 93 (1957).

35. The new Labor Management Reporting and Disclosure Act of 1959 (see note 32 *supra*) provides, inter alia:

"Section 701 (a). Section 14 of the National Labor Relations Act as amended, is amended by adding at the end thereof the following new subsection:

"(c) (1) The Board, in its discretion, may, by rule of decision or by published rules adopted pursuant to the Administrative Procedure Act decline to

Prior to 1926,[36] historically and generally the adjustment of labor disputes involving representation, enforcement of agreements, and employment rights in industries affecting interstate commerce were in the domain of state jurisdiction. Despite the recent development as previously herein discussed, current federal laws do not entirely preempt the area and oust the jurisdiction of the state. States continue to exercise their reach over such matters as a result of several prime reasons, namely: (1) police power;[37] (2) failure of federal legislation to protect or prohibit the matter;[38] (3) different but not conflicting state and federal remedies;[39] (4) and the express cession[40] or grant of concurrent jurisdiction of the area involved.[41] Thus, for express cession or concurrent jurisdiction, the Taft-Hartley Act provides that where a state statute enacts a stricter union security status regulation than that of "union shop" which is permitted by the Taft-Hartley Act[42] the state requirement will prevail. So, too, the state court or agency will have concurrent jurisdiction as a result of the new provision in the Labor Reform Act which eliminated the "no-man's land." [43] Again, the National Labor Relations Board is authorized, under certain conditions, to cede its jurisdiction to state agencies.[44] State mediation services are encouraged to act concurrently with the federal service in resolving labor disputes.[45]

The Supreme Court of Pennsylvania has accorded full and effective recognition of the paramountcy of federal labor law regulating interstate commerce, where such law provides a complete and adequate

assert jurisdiction over any labor dispute involving any class or category of employer, where, in the opinion of the Board, the effect of such labor dispute on commerce is not sufficiently substantial to warrant the exercise of its jurisdiction: Provided, That the Board shall not decline to assert jurisdiction over any labor dispute over which it would assert jurisdiction under the standards prevailing upon August 1, 1959.

"(2) Nothing in this Act shall be deemed to prevent or bar any agency or the courts of any State . . . , from assuming and asserting jurisdiction over labor disputes over which the Board declines, pursuant to paragraph (1) of this subsection, to assert jurisdiction."

Current jurisdictional yardsticks since October 2, 1958, according to NLRB Release R-576, can be found in 1 CCH LAB. L. REP. paragraph 1606.

36. The mandatory requirement to bargain with the collective bargaining representative under majority rule was statutorily first applied on the federal level in the Railway Labor Act of 1936. See Virginian Ry. Co. v. System Fed'n No. 40, 300 U.S. 515 (1937).

37. NLRB v. Fansteel Metallurgical Corp., 306 U.S. 240 (1939).

38. Algoma Plywood & Veneer Co. v. Wisconsin Employment Relations Bd., 336 U.S. 301 (1949).

39. United Constr. Workers v. Laburnum Constr. Corp., 347 U.S. 656 (1954).

40. NLRA, § 14(b), as amended.

41. NLRA, § 14(c), as amended. See note 35 *supra*.

42. Note 40 *supra*.

43. Note 41 *supra*.

44. NLRA, § 10(a).

45. 61 STAT. 136 (1947), 29 U.S.C. § 153 (1952).

remedy.[46] The Pennsylvania test, for example, of federal pre-emption via the National Labor Relations Board is *not* whether that agency has taken jurisdiction, but whether Congress has asserted its power to regulate the relationship.[47]

On the other hand, the Pennsylvania Supreme Court has recently applied the *de minimus* doctrine in *PLRB v. Friedberg,*[48] to affirm the assertion of jurisdiction by the Pennsylvania Labor Relations Board. The *Friedberg* case involved an unfair labor practice proceeding against a local window cleaning firm doing an annual gross business of $40,000, of which $12,000 involved work performed in office buildings housing offices of employers engaged in or affecting interstate commerce. The court held that this employer had but a remote and indirect impact on commerce. On the other hand, the State Board was refused jurisdiction over a soft drink bottler who sold all of his products within Pennsylvania, but annually purchased $33,000 worth of raw materials from without the state.[49] Although the issue has not as of this time been decided directly on point by the Supreme Court of Pennsylvania, a trial court has held that disputes involving trust funds established pursuant to Section 302 of Title III of the Taft-Hartley Act are within the exclusive jurisdiction of the federal courts.[50]

This article will subsequently explore in detail the several forms of action and the available relief in the Pennsylvania courts in labor disputes affecting interstate commerce. Consideration in necessary detail will thus be given to state judicial relief at law, at equity, by declaratory judgments and by contempt proceedings. In order to avoid overlapping and duplication, discussion of jurisdiction of Pennsylvania courts in labor matters affecting interstate commerce is therefore being reserved for that time. Suffice it to note here that federal assertion of jurisdiction to the contrary notwithstanding, the Pennsylvania Supreme Court has, prior to the *Lincoln Mills* case, affirmed state court jurisdiction to enforce labor agreements[51] and in certain circumstances to award

46. Hodges Bedding Co. v. PLRB, 388 Pa. 333, 131 A.2d 93 (1957); Garner v. Teamsters Local 766, 373 Pa. 19, 94 A.2d 893, *aff'd,* 346 U.S. 485 (1953).

47. Pittsburgh Rys. Co. Employees Case, 357 Pa. 379, 54 A.2d 891 (1947).

48. 395 Pa. 294, 148 A.2d 909 (1959). The subject matter in the Friedberg case was considered too remote and merely incidental to interstate commerce.

49. PLRB v. Employees of Napoli, 395 Pa. 301, 150 A.2d 546 (1959).

50. Bricklayers' Local 1 of Pennsylvania Welfare Fund, Pa. D. & C.2d 468 (C.P. Phila. 1957). *Accord, In re* Bricklayers' Local 1 of Pennsylvania Welfare Fund, 159 F. Supp. 37 (E.D. Pa. 1958). *Cf.* Philadelphia Nat'l Bank v. Employing Bricklayers' Ass'n, 169 F. Supp. 591 (E.D. Pa. 1959).

51. Philadelphia Marine Trade Ass'n v. International Longshoremen's Ass'n, 382 Pa. 326, 115 A.2d 733, *cert. denied,* 350 U.S. 843 (1955); General Bldg. Contractors' Ass'n v. Operating Engineers Union, AFL, 370 Pa. 73, 87 A.2d 250 (1952).

damages for tortious conduct without legal justification resulting in either losses to the employer[52] or to the individual employee.[53]

Section 301 of the Taft-Hartley Act is drafted in terms of actions for damages in the enforcement of provisions of labor agreements. It expands the jurisdiction of federal courts over labor agreements, granting jurisdiction regardless of the amount involved or the otherwise necessary jurisdictional requirement of diversity of citizenship. An action can be brought against a labor union *eo nomine* as an entity, and a money judgment can be enforced against the assets of a labor union. In *Textile Workers Union v. Lincoln Mills*[54] the Supreme Court of the United States held that Section 301, although stated in terms of damage actions, authorizes the federal courts to decree specific performance, as well, in order to enforce the arbitration provisions of a labor agreement. In such event, too, the court expressly decided that the substantive law to be applied will be federal and not state law.[55] The previously formidable road blocks of the Norris-LaGuardia Act, proscribing injunctive relief in labor disputes were swept aside on the grounds that "failure to arbitrate was not a part and parcel of the abuses against which the Act was aimed".[56] The *Lincoln Mills* decision, however, has left undecided a number of pressing issues. One of the issues posed is whether the federal courts would have jurisdiction to grant specific enforcement of a labor agreement in a fact situation involving grievance procedure "labor disputes" within the meaning of Sections 4 and 13(c) of the Norris-LaGuardia Act. Two additional vital issues left hanging in mid-air are the following: First, does Section 301 confer exclusive jurisdiction upon the federal courts over actions for breach of labor agreements in areas affecting commerce? Secondly, assuming *arguendo* that the state courts have concurrent jurisdiction, does the Norris-LaGuardia Act prevent the state court from affiording equitable relief otherwise available under state law?

52. Wortex Mills, Inc. v. Textile Workers Union, CIO, 380 Pa. 3, 109 A.2d 815 (1954). *Accord,* United Constr. Workers v. Laburnum Constr. Corp., 347 U.S. 656 (1954).

53. MacDonald v. Feldman, 393 Pa. 274, 142 A.2d 1 (1958); Benjamin v. Foidl, 379 Pa. 540, 109 A.2d 300 (1954). *Accord,* International Union, United Auto. Workers, U.A.W.-CIO v. Russel, 356 U.S. 634 (1958); International Ass'n of Machinists v. Gonzales, 356 U.S. 617 (1958).

54. 353 U.S. 448 (1957). *Accord,* General Elec. Co. v. Local 205, United Elec. Workers, 353 U.S. 547 (1957); Goodall-Sanford, Inc. v. United Textile Workers, 353 U.S. 550 (1957).

55. 353 U.S. at 456-57, where Mr. Justice Douglas, speaking for the majority of the Court, held that: "We conclude that the substantive law to apply in suits under Section 301(a) is federal law. . . . Federal interpretation of the law will govern, not state law."

56. *Id.* at 458.

Until the answers to these questions are decided by the Supreme Court of the United States, this controversial area of labor law will be the source of a seething mass of legal contradictions and differences.[57] On the previously posed questions of concurrent jurisdiction of the state courts and whether the Norris-LaGuardia provisions will be inapplicable to such actions, an affirmative answer to both questions was given by the Supreme Court of California in *McCarroll v. Council of Carpenters.*[58] The action in the *McCarroll* case was brought by an employer affecting interstate commerce against the District Council of Carpenters for damages and equitable relief. The District Council had called a strike under circumstances which the employer alleged were a violation of the labor agreement.

Decisional Pennsylvania law would seem to indicate with reasonable certainty that the law of the *McCarroll* decision will be adopted without meaningful changes by the Pennsylvania Supreme Court. The reasons for this conclusion are, among many others, fourfold. First, the Pennsylvania courts have held that violation of a labor agreement is not, per se, an unfair labor practice.[59] Second, Pennsylvania courts will vigorously protect against a breach of a valid subsisting labor agreement even where the employer is admittedly in an industry affecting interstate commerce.[60] Third, the Pennsylvania Labor Anti-Injunction Act does not apply where there is a breach of a valid labor agreement.[61] Finally, the Pennsylvania courts will extend themselves to encourage a stable industrial relationship with amicable settlement of grievances.[62] It is axiomatic, nonetheless, under the rule of the *Lincoln*

57. Gregory, *The Law of the Collective Agreement,* 57 MICH. L. REV. 635, 645-55 (1959). Professor Gregory presents an analysis of the problem of concurrent jurisdiction and some forceful arguments for uniformity and for specific performance of labor agreements, the provisions of the Norris-LaGuardia Act to the contrary notwithstanding.

58. 49 Cal.2d 45, 315 P.2d 322 (1957), decided subsequent to the *Lincoln Mills* case (cited herein in note 54 *supra*), applies the rule of the *Lincoln Mills* case as the California Supreme Court interprets that rule.

59. See cases cited in note 51 *supra.* These cases apply the rule that where the parties have entered into a valid subsisting labor agreement, enforcement thereof is left to a state's judiciary and not to the Labor Board. Violation of the terms of such an agreement is not an unfair labor practice under Pennsylvania law since § 6 of the Pennsylvania Labor Relations Act does not include this matter within the enumerated proscribed practices which are statutorily made unfair labor practices. PLRB v. Chester and Delaware County Bartenders Union, 361 Pa. 246, 64 A.2d 834 (1949). Although the federal NLRA does not provide that violation of the terms of a labor agreement constitutes an unfair labor practice, collective bargaining agreements are enforced in several states by the labor board or by other administrative agencies: Under the Wisconsin Employment Peace Act, Wis. Stat. (Brossard, 1943), Section 111.06; the Minnesota Labor Relations Act, Minn. Stat. Ann. Sections 179.11, 179.12; and by the Industrial Commission of Colorado, Colo. Stat. Ann. (Michie, Supp. 1946) c. 97, Sections 94(6)(f) and (6)(2)(c).

60. See note 51 *supra.*

61. Act of June 9, 1939, P.L. 302, 43 P.S. 206d(a).

62. PLRB v. Fortier, 395 Pa. 247, 150 A.2d 122 (1959).

Mills case that the federal substantive law rather than the state substantive law, must be applied in a suit which involves a breach of a labor agreement under Section 301 of the Taft-Hartley Act.

Although there are many remaining points of inquiry on the score of federal-Pennsylvania jurisdiction, space will permit but two more items for discussion, namely: enforcement of the uniquely personal rights of union members, and diversity cases. *Association of Westinghouse Salaried Employees v. Westinghouse Elec. Co.*[63] is a leading case on point concerning contract terms applying directly to the benefit of the member. The Supreme Court held in the *Westinghouse* case that in a non-diversity action, a suit cannot be brought in a federal court by a union under Section 301 of the Taft-Hartley Act, where the action is to recover wages due members of a union under a labor contract. The action must be brought by the member and in a state court. In 1955, this writer took exception to the rationale of *Westinghouse* which in effect compels workers to file separate suits — a costly and absurd procedure which will often deny justice because the member will usually balk.[64] Fortunately, the Pennsylvania trial courts do not take this point of view.[65] Appellate decisions must be awaited.

The Supreme Court has met and overcome the problem of distinguishing the rule of the *Westinghouse* case from that of *Lincoln Mills*. In the *Westinghouse* case the emphasis is upon the "uniquely personal" problem involved in wage benefits which go directly to the union member. In the *Lincoln Mills* case, the benefit sought of enforcing the arbitration provision of a labor contract goes directly to the union.[66]

Labor unions which are unincorporated associations must sue or be sued, under the PENNSYLVANIA RULES OF CIVIL PROCEDURE, as an entity and class actions in such cases are not permitted in Pennsylvania.[67] Federal courts are permitted to entertain labor suits in both class or entity actions in diversity cases, as the situation may be, en-

63. 348 U.S. 437 (1955).

64. *Id.* at 467, where Mr. Justice Douglas makes this point. For comment with respect to this matter see Stern, *Intra-Union Activities, Membership and Collective Bargaining Rights Under Pennsylvania Law,* 29 TEMP. L. Q. 38, 58-60 (1955).

65. International Union of Elec. Workers v. Westinghouse Elec. Corp., 7 D. & C. 2d 290 (Pa. 1956); Federation of Salaried Unions v. Westinghouse Elec. Corp., 7 D. & C. 2d 281 (Pa. 1956). The Pennsylvania Supreme Court has not as yet decided this issue.

66. This distinction would appear to be specious. For a sound discussion which indicates the many areas where benefits going "directly" to union members are inextricably intertwined with benefits to the union, see Cox, *Rights Under a Labor Agreement,* 69 HARV. L. REV. 601 (1956).

67. Pa. R. C. P. § 2154, PA. STAT. ANN. tit. 12, appendix. *Accord,* Underwood v. Maloney, 256 F.2d 334 (3d Cir.), *cert. denied,* 358 U.S. 864 (1958).

tirely distinct from the jurisdiction granted by Section 301 of the Taft-Hartley Act.[68] In such event, Section 17(b) of the FEDERAL RULES OF CIVIL PROCEDURE will apply. "Capacity" to sue or be sued as defined therein provides, *inter alia,* that "capacity . . . shall be determined by the law of the state in which the district court is held." Strict interpretation is the rule of statutory construction for this Act.

Since Pennsylvania required that a voluntary unincorporated association union shall be sued qua union, this provision of Rule 17(b) will not permit a class suit in federal court in such diversity cases.[69] Complete diversity must also exist in that the citizenship of a union is determined by each and every one of its members. Furthermore, the jurisdictional money standard cannot be aggregated for individuals except where they have "a common undivided interest to enforce a single . . . right." [70] Under the Federal General Venue Statute[71] an action enforcing labor agreements or employment or other rights may generally be brought in the judicial district in which all of the plaintiffs or all of the defendants live. Illustrative of the result of strict construction of the basic requirements in diversity cases, the action in *Underwood v. Maloney*[72] was dismissed in the Third Circuit for lack of jurisdiction.

Concurrent jurisdiction by state courts in suits under Section 301 of the Taft-Hartley Act is desirable and generally to the good. Such concurrent jurisdiction should be encouraged provided that the state courts are required to observe the important proscriptions of the Norris-LaGuardia Act with reference to denial of injunctive relief in "labor disputes" as defined in that act. The docket of current civil cases yet to be tried in the District Court for the Eastern District of Pennsylvania evidences an appalling time lag of three years. The maxim that justice delayed is justice denied is probably more applicable to the field of labor law than to most other fields of law.

Additional arguments are available for the proposition that there should be concurrent state court jurisdiction in Section 301 suits. Violation of the terms of a labor agreement does not constitute an unfair labor practice under the terms of the National Labor Relations Act, and hence the field is not pre-empted on this score. Furthermore, the state courts have traditionally been the recognized arbiters of the fashion, content, and style of contract law — whether the contract

68. This aspect of the procedural law is reviewed in Peck, *Venue and Jurisdiction to Enforce Labor Contracts,* 35 U. DET. L. J. 505 (1958).
69. See note 67 *supra.*
70. Thompson v. Gaskill, 315 U.S. 442, 446 (1942). Also see Peck *supra,* note 68.
71. 62 STAT. 935 (1948), 28 U.S.C. 1391 (1952).
72. 256 F.2d 334 (3d Cir.), *cert. denied,* 358 U.S. 864 (1958).

concerns commercial transactions or collective bargaining relationships. True, the development of state labor law is of relatively recent vintage as compared to that of other contract law. Be that as it may, it cannot be gainsaid that state courts are in an excellent position to assist the federal courts in fashioning the now largely embryonic substantive federal common-law of labor referred to in the *Lincoln Mills* case by Mr. Justice Douglas.

Issue should, however, be taken with the school of thought which contends that otherwise applicable proscriptions of the Norris-LaGuardia Act do not apply in Section 301 cases where state courts take concurrent jurisdiction.

The thrust of federal legislation and of the Supreme Court and other federal court decisions on federal pre-emption involving application of the terms of the Wagner and Taft-Hartley Acts has been aimed toward the end goal of *uniformity*. This has been true whether the issues have involved vindication of public rights such as the prevention of unfair labor practices, or the enforcement of private rights such as the enforcement of the provisions of labor agreements. It would be at odds with this thrust toward uniformity to interpret and apply the rules of the *Lincoln Mills* case in a manner which would permit otherwise applicable Norris-LaGuardia proscriptions against injunctive relief in labor cases to be repealed by implication, *in toto,* by Section 301 where the suit involves enforcement of a labor agreement. The Courts of Appeal in the different circuits differ on this score.[73] The Third Circuit has adopted the rule that the Norris-LaGuardia Act does not prevent a federal court from granting injunctive relief against the breach of a labor agreement in a suit brought pursuant to Section 301.[74] *A. H. Bull Steamship Co. v. Seafarer's Int'l Union,*[75] on the other hand, is a leading case which holds to the contrary that the prohibitions of the Norris-LaGuardia Act do apply. This writer is a strong proponent for the sanctity and judicial enforceability of collective bargaining agreements. There is cogent argument for this

73. See Gregory *supra* note 57 and also Hays, *State Courts and Federal Pre-emption,* 23 Mo. L. REV. 373 (1958). For an argument on behalf of concurrent jurisdiction by state administrative agencies, see Stern, *Federal Pre-emption and the Jurisdiction of the Pennsylvania Labor Relations Board,* 18 U. PITT. L. REV. 27, 41-50 (1956). In the *Guss, Fairlawn,* and *San Diego* cases cited herein in note 33 *supra,* the United States Supreme Court denied this concurrent jurisdiction. But Congress has since mandated a solution which recognizes concurrent jurisdiction by eliminating the "no-man's land" by virtue of Section 701 of the so-called Labor Reform Act enacted on September 14, 1959 and which is cited in note 35 *supra.*

74. Independent Petroleum Workers of New Jersey v. Esso Standard Oil Co., 235 F.2d 401 (3d Cir. 1956).

75. 250 F.2d 326 (2d Cir. 1957), *cert. denied,* 335 U.S. 932 (1958).

approach. But the object of all judicial interpretation and construction of federal *statutory* law is to conscientiously ascertain and effectuate the intention of Congress. Anything less than this judicial goal is to gainsay the constitutional separation of powers with respect to the legislative as compared with the judicial functions. Let me hasten to note that it would be naive to argue that there is, or should be, a watertight and complete exclusiveness of function by these two fundamental organs of government. Nonetheless, practical exigencies to the contrary notwithstanding, Congress has mandated certain basic procedural prohibitions which have denied the federal courts their inherent powers to issue equitable relief in labor disputes within the meaning of Sections 4 and 13 of the Norris-LaGuardia Act. Section 301 of the Taft-Hartley Act contemplates as one of its prime purposes the enforcement of the terms of valid subsisting labor agreements. Congress has expressly negated the application of the Norris-LaGuardia Act in certain other areas encompassed within the same Taft-Hartley Act. Witness in this latter respect, for example, Section 10(h)[76] of the Taft-Hartley Act which withdraws the application of the Norris-LaGuardia Act involving requests by the National Labor Relations Board for injunctive relief to prevent unfair labor practices. If this is the statutory format, and if Congress was aware of the existence and impact of the Norris-LaGuardia Act as it affected the Taft-Hartley Act, how then can it be argued that Section 301 repeals the Norris-LaGuardia Act? To ignore this reasoning is tantamount to accepting a repeal by implication of the Norris-LaGuardia Act under the law, and circumstances unequivocally point to the opposite conclusion, namely: (1) this result is not supported by the legislative history of Section 301; (2) Congress has expressly acted in other areas of the Taft-Hartley Act, and where it desired to negate the impact of the Taft-Hartley Act it did so expressly; (3) the plain language of Section 301 does not warrant this conclusion; and (4) Congress has been aware of the differences between the Courts of Appeal on this score, has amended the Taft-Hartley Act in certain respects by the Labor Reform Act enacted by Congress on September 4, 1959, and nevertheless, has not seen fit to resolve this matter by express amendment. It must be remembered, too, that repeals by implication even absent the persuasive

76. NLRA, § 10(h) provides that when granting equitable relief, ". . . the jurisdiction of courts sitting in equity shall not be limited by the Act entitled 'An Act to amend the Judicial Code and define and limit the jurisdiction of courts sitting in equity and for other purposes' approved March 29, 1932 (U.S.C. Supp. VII, title 29, secs. 101-115)." The Act of 1932 referred to above is popularly known as the Norris-LaGuardia Act.

legislative format which evidence the contrary are not favored by state or federal courts.[77]

If the provisions of the Norris-LaGuardia Act do apply in the federal courts with respect to suits involving Section 301, such provisions should be equally applicable to the state courts. In the event that state courts cannot be subjected to the proscriptions of the Norris-LaGuardia Act, then there is no other practical alternative except to deny concurrent jurisdiction to the state courts in suits under Section 301 praying for injunctive relief which is otherwise prohibited by the Norris-LaGuardia Act. It would seem illogical that a party should be able to accomplish a judicial remedy by indirection, when it cannot otherwise be accomplished by direction. The fact situation in the *A. H. Bull Steamship Co.*[78] case is a good illustration of this point. There the employer filed a suit under Section 301 seeking, *inter alia,* to enjoin a union which was on strike as a result of an impasse in the renegotiation of a wage schedule. The labor agreement with the union was valid and subsisting at the time of and during the strike. This labor agreement contained a so-called "no-strike" clause. The Court of Appeals in the *A. H. Bull* case held that the basic dispute resulting in the strike involved a labor dispute within the meaning of the Norris-LaGuardia Act. Injunctive relief was denied, in that the court decided that the Norris-LaGuardia Act under the fact circumstances of the *A. H. Bull* case was not repealed by implication by virtue of Section 301. Without discussing this case on its merits, the decision is a compelling illustration of the undesirability of permitting state courts to steer free and clear of the proscriptions imposed upon federal courts by the Norris-LaGuardia Act. The Supreme Court of California has accomplished this very result in the *McCarroll v. Council of Carpenters*[79] case. In the *McCarroll* case, the court held that state courts are not affected by or within the purview of the prohibitions of the Norris-LaGuardia Act. The California court held that this is the rule even in such cases where the Norris-LaGuardia Act could be applied to prevent sister federal courts from granting injunctive relief in labor disputes.

The acceptance and application of the rule of the *McCarroll* case will permit a plaintiff in certain cases to select the state forum and receive greater relief in that forum than the relief afforded by the

77. The Pennsylvania approach to this problem is found in the Statutory Construction Act, Act of May 28, 1937, P.L. 1019, 46 P.S. §§ 501-602; and more specifically in 43 P.S. § 591. For decisional law, see Petition of H. C. Frick Coke Co., 352 Pa. 269, 42 A.2d 532 (1945).

78. See note 75 *supra.*

79. See note 58 *supra.*

federal court for the same action under Section 301. This same result would accrue under Pennsylvania law in the factual context of the *A. H. Bull* case. The 1939 amendments to the Pennsylvania Labor Anti-Injunction Act expressly return to the state courts their traditional equity power to generally enjoin violations of valid subsisting labor contracts. Increasing uncertainty, if not disaster, is predicted if the rule of the *McCarroll* case is adopted, and in the event that the Supreme Court of the United States finally sustains the theory of the *A. H. Bull* case, state and federal courts in the same district will mete out different measures of relief under identical facts. The *Lincoln Mills* decision gives reason to believe that Mr. Justice Douglas, speaking for the majority, has left a telling opening whereby the Supreme Court will sustain the *A. H. Bull* theory[80] that the Norris-LaGuardia Act will deny federal courts equitable powers under the facts of the *A. H. Bull* case.

IV.

SUITS IN EQUITY AND EQUITABLE RELIEF IN THE PENNSYLVANIA COURTS.

There are many forms of judicial relief, but the four prime methods for enforcing labor contracts and employment rights are by suits in equity, actions at law, declaratory judgments, and contempt proceedings. This paper will limit consideration to these four methods. Equity is given greatest emphasis in that, if available, it affords the most embracing and effective remedy. Where the equity court has also the power to issue *ex parte* injunctive relief based on affidavit only, equity affords the speediest as well as the most effective judicial remedy in labor disputes.

One must also note that, but for an insignificant number of labor unions to the contrary, practically all unions are voluntary unincorporated associations in the eyes of the law. The local labor union is the child of the larger parent international union. The international union grants the local union a charter under which the latter remains in existence and functions until and unless either the charter is suspended or withdrawn or the local severs its relationship by disaffiliation. Some labor unions, but infinitesimally few in number, are corporations which have been incorporated as non-profit corporations. Since these incorporated unions are by far the exception to the rule, this paper will present the subject matter which follows solely as it applies to labor unions as voluntary unincorporated associations.

80. See note 75 *supra*.

A. *Source and Scope of Equitable Jurisdiction.*

The equitable powers of the Pennsylvania courts are solely statutory. In 1836, the Legislature conferred for the first time upon the Courts of Common Pleas ". . . the jurisdiction and powers of a court of chancery . . . in the supervision and control . . . of unincorporated societies and associations." [81] The jurisdictional reach of Pennsylvania equity courts in cases arising or growing out of labor disputes is therefore measured by the provisions of this Act of 1836 and by other statutes enacted thereafter.

It would appear that the *Brace Brothers v. Evans*[82] case decided in 1888 is the first reported case in which a labor injunction was granted by a Pennsylvania Court of Common Pleas. The *Brace Brothers* decision ushered in an era spanning from 1890 to 1930 wherein equity intervened frequently and unsympathetically in labor matters. This is an era sometimes referred to as "government by injunction." Thus, more than four decades were to elapse subsequent to the *Brace Brothers* decision before the Legislature would "reverse the field" by enacting a Labor Anti-Injunction Act in 1931.[83]

B. *The Labor Anti-Injunction Act of 1937.*

The current Pennsylvania Labor Anti-Injunction Act of 1937, as amended,[84] plays a leading role in determining the availability of equitable relief in labor matters. The Act is largely patterned after the federal Norris-LaGuardia Act.[85] The Pennsylvania Act generally prevents the courts of equity from issuing injunctions in "labor disputes."[86]

81. Act of June 16, 1836, P.L. 784, 17 P.S. 281. Clark v. Beamish, 313 Pa. 56, 169 Atl. 130 (1933). Certain common law forms, to be sure, were available prior to 1836 to achieve equitable remedies in Pennsylvania. For example, a statute enacted the form of "sci. fa. sur mortgage" which applied the common law writ of scire facias to the equitable remedy of a mortgage foreclosure. Several of the Pennsylvania governors during colonial times, more particularly Governors Keith and Gordon, functioned as Chancellors during the two decades beginning with 1720. In general, Pennsylvania courts did not have equity powers. And where such equity powers were given to the county courts, they were shortlived. Witness for example the Acts of 1701, 1710, and 1715 which granted such powers to the county courts. English Parliament speedily repealed these statutes by virtue of the power in that day of Parliament so to do.

82. 35 Pitts. L. J. 399 (Pa. 1888).

83. Act of June 23, 1931, P.L. 926, 17 P.S. 1047.

84. Act of June 2, 1937, P.L. 1198, 43 P.S. 206a-r, as amended by the Act of June 9, 1939, P.L. 302, 43 P.S. 206d(a-d). These statutes repealed the Act of 1931 cited in note 83 *supra.*

85. 47 STAT. 70 (1932), 29 U.S.C. § 101 (1956).

86. Bright v. Pittsburgh Musical Soc'y, 379 Pa. 335, 108 A.2d 810 (1954) holds that a labor dispute must involve an employer either as one of the parties to the dispute, or as one whose employee representation is at issue between two unions. Grimaldi v. Local No. 9, Journeymen Barbers Int'l Union, 397 Pa. 1, 153 A.2d 214 (1959) holds that a labor dispute does not exist where the establishment is a one-man independent business operation conducted by an independent operator. *But see* Garden Amusement v. Wilkes-Barre Local 325, 5 D. & C. 2d 174 (Pa. 1957) where the

It applies *only* in cases involving or growing out of a labor dispute. In such event injunctive relief is prohibited against any particular item specified in Section 6 and 7 of the Act.

Section 3 of the Act defines "labor disputes" in a broad and inclusive manner as follows:

> "(a) A case shall be held to involve or grow out of a labor dispute when the case involves persons who are engaged in a single industry, trade, craft or occupation, or have direct or indirect interests therein, or who are employees of the same employer, or who are members of the same or an affiliated organization of employers or employees, whether such dispute is (1) between one or more employers or associations of employers, and one or more employees or association of employees; (2) between one or more employers or associations of employers, and one or more employers or association of employers; or (3) between one or more employees or association of employees, and one or more employees or association of employees; or when the case involves any conflicting or competing interests in a 'labor dispute' (as hereinafter defined) of 'persons participating or interested' therein (as hereinafter defined).
>
> "(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, craft or occupation in which such dispute occurs or has a direct or indirect interest therein, or is a member, officer or agent of any association composed in whole, or in part, of employers or employees engaged in such industry, trade, craft or occupation.
>
> "(c) The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment relations or any other controversy arising out of the respective interests of employer and employee, regardless of whether or not the disputants stand in the proximate relation of employer and employee, and regardless of whether or not the employees are on strike with the employer."

The procedural and substantive requirements and proscriptions of the Labor Anti-Injunction Act are premised on the condition pre-

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controversy involves but one employee. Ralston v. Cunningham, 143 Pa. Super. 412, 18 A.2d 108 (1940) holds that quarrels between two unions over the interpretation of terms of a labor contract which settled a labor dispute does not involve a labor dispute which denies equitable jurisdiction to Pennsylvania courts. *But see* DeWilde v. Scranton Bldg. Trade & Constr. Council, 343 Pa. 224, 22 A.2d 897 (1941), which holds that injunctive relief will be denied where the employer uses the subterfuge of entering into a labor agreement with a rival union in order to avoid bargaining with the disputing union.

cedent that a "labor dispute" is involved within the definitions and purview of that Act. In the summary which follows, it will be presumed without repeating each time that the matter involved has grown out of or involves such a labor dispute. Thus, equitable relief must be granted in strict conformity with the Act and pursuant to its stated public policy.[87] The duration of such equitable relief, when granted, is limited to ten days from the restraining order or temporary injunction, and to 180 days for a so-called permanent injunction unless the relief is again reviewed and continued.[88] Blanket injunctions are prohibited, and specific findings of fact must support any injunction which the court grants.[89] *Ex parte* relief is prohibited[90] and affidavits have no evidentiary weight.[91] Injunctions are binding solely on the parties to the action, their agents and employees, who have received actual notice of the action.[92] Plaintiff must file a bond to fully indemnify in the event that equitable relief is erroneously decreed[93] and, in addition, costs and attorneys fees can be garnered by defendant in the event that such equitable relief has been erroneously granted or where equitable relief is denied by the court.[94] Appeals from trial court decrees are expedited, and go directly to the Supreme Court. Such appeals are favored with precedence over all other matters then before the Supreme Court.[95] Finally, the Act prohibits application of vicarious liability to unions, members, or union officers. Responsibility and liability, within the meaning and application of the Act, can be established only where there has been actual authorization, or subsequent actual ratification of the acts complained of, and after actual knowledge thereof.[96]

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87. See note 84 *supra*. The Pennsylvania Labor Anti-Injunction Act will hereinafter be cited as 43 P.S. 206 and the name of the act will be cited as LABOR ANTI-INJUNCTION ACT.

88. LABOR ANTI-INJUNCTION ACT § 16, 43 P.S. 206p.

89. LABOR ANTI-INJUNCTION ACT § 12, 43 P.S. 206l. Section 206i requires, in addition, findings by the court which include, among others: irreparable property injury and inadequacy of police protection. Section 206k requires that the plaintiff shall have made every reasonable effort to settle the dispute, either by negotiations, or by mediation or voluntary arbitration.

90. LABOR ANTI-INJUNCTION ACT § 9, 43 P.S. 206i. Ex parte injunctions are nevertheless available as a result of the provisions of the Amendatory Act of 1939 cited in note 84 *supra*. See Carnegie-Illinois Steel Corp. v. United Steelworkers of America, 353 Pa. 420, 45 A.2d 857 (1946); Westinghouse Elec. Corp. v. United Elec. Workers, 353 Pa. 446, 46 A.2d 16 (1946).

91. LABOR ANTI-INJUNCTION ACT § 9, 43 P.S. 206i.

92. *Ibid.*

93. LABOR ANTI-INJUNCTION ACT § 10, 43 P.S. 206j.

94. LABOR ANTI-INJUNCTION ACT § 17, 43 P.S. 206q.

95. LABOR ANTI-INJUNCTION ACT § 15, 43 P.S. 206o.

96. LABOR ANTI-INJUNCTION ACT § 8, 43 P.S. 206h.

C. *The Amendatory Act of 1939.*

The Amendatory Act of 1939,[97] within its purview, has restored to the courts of equity the jurisdiction and power which these courts had exercised as of old by virtue of the general equity powers granted pursuant to the Act of 1836 as previously noted. In substance, the Amendatory Act provides the 1937 Act ". . . shall not apply in any case . . ."

(a) In disregard or breach, or tending to procure a violation or breach, of a valid subsisting labor agreement where the complaining party has *not committed an unfair labor practice* or violated any of the terms of the labor agreement.[98] (Emphasis supplied.)

(b) Where a majority of the employees have not joined a labor union, or where two or more unions are competing for membership of the employees, and the union engages in conduct intended to coerce the employer to compel the employees to join or remain in the union.[99]

(c) Where conduct is calculated to coerce an employer to violate the Pennsylvania or the National Labor Relations Act.[100]

(d) Where an individual or a labor union seizes, damages, or destroys the property of the employer in order to compel him to accede to any demands, or terms of employment, or for collective bargaining.[101]

The Amendatory Act of 1939, as construed by the Supreme Court of Pennsylvania, has been declared to have resulted in changes both substantive and procedural. For instance, the equity courts have been restored their traditional authority and power to issue *ex parte* injunctive relief in cases encompassed within the terms of the Amendatory Act.[102] It would seem to the writer that the judicial statutory construction of the Amendatory Act in some of the "close" cases has unnecessarily sapped the Labor Anti-Injunction Act of its strength and vigor where it is most needed, namely: where the strong arm of equity has most abused its "muscle" in the past. In these "close" cases, especially in light of the liberal and sympathetic public policy which was not expressly circumscribed or whittled down by the 1939 Act, the Pennsylvania Supreme Court in the opinion of the author has promulgated a rather narrow and strict point of view which is not in complete harmony with a public policy encouraging collective bar-

97. Act of June 9, 1939, P.L. 302, 43 P.S. 206d(a-d).

98. LABOR ANTI-INJUNCTION ACT § 4(a), 43 P.S. 206d(a).

99. LABOR ANTI-INJUNCTION ACT § 4(b), 43 P.S. 206d(b).

100. LABOR ANTI-INJUNCTION ACT § 4(c), 43 P.S. 206d(c).

101. LABOR ANTI-INJUNCTION ACT § 4(d), 43 P.S. 206d(d).

102. Philadelphia Marine Trade Ass'n v. International Longshoremen's, Ass'n, 382 Pa. 326, 115 A.2d 733, *cert. denied,* 350 U.S. 843 (1955). *Accord,* cases cited in note 90 *supra.*

gaining, the status quo, and confrontation and cross examination where labor injunctions are involved.[103]

D. *General Prerequisites for Accepting Equitable Jurisdiction.*

Certain basic prerequisites must be first satisfied before a Pennsylvania equity court will accept jurisdiction. This is so whether the suit concerns a labor contract or any other matter. It would serve no constructive purpose, nor is the space here available, to present a detailed analysis of all of the prerequisites and applicable equitable maxims. Since some of these items are generally relevant to the subject matter of this article, several of those having the most impact on labor contracts will be touched upon in the paragraphs which immediately follow. Thereafter, the prerequisites which have particular and compelling impact on equitable enforcement of labor contracts and of employment rights will be more fully explored.

Where an adequate remedy at law exists, equitable relief will, of course, not be given.[104] Equity discourages stale claims and applies the rule that *"vigilentibus non dermientibus sequitas subvenit"*—equity serves the vigilant, not those who sleep on their rights. Laches therefore will bar an action where the plaintiff has evidenced lack of due diligence to litigate a claim and, as a result, the institution of an action and the prosecution thereof would be unjust.[105] Laches is not determined solely by the passage of time[106] nor does it depend on statutes of limitations.[107] Pennsylvania adopts, in general, the equitable maxims. A few examples in this respect should suffice. Thus, equity will not require a useless act.[108] It considers that as done which ought to be done.[109] As for the maxim that he who prays for equitable relief must come with clean hands, Pennsylvania applies this equitable maxim

103. Read the powerful dissent by Mr. Justice (now Chief Justice) Charles Alvin Jones in the case of Westinghouse Elec. Corp. v. United Elec. Workers, 353 Pa. 446, 46 A.2d 16 (1946). The rationale of this dissent is examined and discussed with approval in Stern, *Two Decades on Pennsylvania Law on Picketing in Industrial Disputes (1933-1954)*, 28 TEMP. L. Q. 50, 62-64 (1954).

104. Brown v. Gloeckner, 4 D. & C. 2d 55 (1954), *aff'd per curiam*, 383 Pa. 318, 118 A.2d 449 (1955).

105. For illustrative labor cases sounding in equity which hold that unreasonable delay in filing or prosecuting the suit will bar the action, see Kern v. Duquesne Brewing Co. of Pittsburgh, 396 Pa. 379, 152 A.2d 682 (1959); Madera v. Monongahela Ry. Co., 356 Pa. 460, 52 A.2d 329 (1947). *Cf.* Fidelity Cas. Co. of New York v. Kizis, 363 Pa. 575, 70 A.2d 227 (1950); Lutherland, Inc. v. Pahlen, 357 Pa. 143, 53 A.2d 143 (1947).

106. Lehner v. Montgomery, 180 Pa. Super, 493, 119 A.2d 626 (1956).

107. Alker v. Philadelphia Nat'l Bank, 372 Pa. 327, 93 A.2d 699 (1953).

108. Greenan v. Ernst, 393 Pa. 321, 143 A.2d 32 (1958); Brooks v. Conston, 364 Pa. 256, 72 A.2d 75 (1950).

109. Stark v. Lardin, 133 Pa. Super. 96, 1 A.2d 784 (1938).

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only where the plaintiff's wrongdoing is directly involved in and affects the controversy being litigated.[110]

Where an equitable action involves damages, and "an adequate remedy at law" [111] exists, equity will transfer the matter to the law side of the courts. Will equity, then, ever assume jurisdiction of an action for damages? The answer to this question is an affirmative one where the resultant damage is "irreparable." The test of irreparable injury, by and large, is premised on continuous or frequent recurrence so that it cannot be reasonably and fairly redressed at law by damages. Where injury of the nature which cannot be completely repaired, so that the injured party is again made whole, is likely to ensue as a result of these constant or frequent acts, equity will assume jurisdiction.[112] The right involved must be clear, and not open to speculation or conjecture.[113]

Pennsylvania courts of equity will accept jurisdiction only where property rights are involved.[114] For justiciability, these property rights must be existant at the time of filing the action and not inchoate or, having existed at one time in the past, been extinguished for one reason or another.[115]

E. *The Property Right Requirement.*

Before proceeding with an analysis of the property right requirement, it is well to recall that many problems involving property rights arising from the labor agreement concern third persons who are not, as such, parties to that agreement. To avoid duplication, this aspect of the law and its effect will be discussed at a later point.

A fundamental condition precedent for equitable relief is the requirement that the harm to be remedied involves an injurious invasion, without justification, of another's property right.[116] Such an injury cannot be doubtful, eventual or contingent.[117]

110. Hartman v. Cohn, 350 Pa. 41, 38 A.2d 22 (1944).

111. Pennsylvania State Chamber of Commerce v. Torquato, 386 Pa. 306, 125 A.2d 755, *cert. denied sub nom.*, 352 U.S. 1024 (1956). This case defines "adequate remedy at law" as a remedy which is specific, and which is adapted to securing the relief sought in a convenient, effective and complete manner.

112. Sparhawk v. Union Passenger Ry., 54 Pa. 401 (1867).

113. Schuylkill Trust Co. v. Schuylkill Mining Co., 358 Pa. 535, 57 A.2d 833 (1948).

114. Diamond v. Diamond, 372 Pa. 562, 94 A.2d 569 (1953); Essik v. Shillan, 347 Pa. 473, 32 A.2d 416 (1943).

115. McMenamin v. Philadelphia Transp. Co., 356 Pa. 88, 51 A.2d 702 (1947).

116. See note 114 *supra*. *Cf.* Heasely v. Operative Plasterers Union, AFL, 324 Pa. 257, 188 Atl. 206 (1936).

117. Gavigan v. Bookbinders Union No. 97, 394 Pa. 400, 147 A.2d 147 (1959). *Accord,* Siranovich v. Butkovich, 359 Pa. 134, 58 A.2d 461 (1948); Cella v. Davidson, 304 Pa. 389, 156 Atl. 99 (1931).

The right to work has been categorized as one of the most important property rights. Equitable relief will be granted to an individual employee to protect his right to work from malicious, tortious, or otherwise unprivileged infringement, whether such interference stems from a labor union, an employer, or any other third party.[118] Malice in this context involves the intention to do harm without legal or social justification.[119] An apt example in this respect is the enforcement of union security which, in turn, results in the dismissal of an employee from his job. Closed shop union security is legal in Pennsylvania, and a court will enforce this union status.[120] Thus, where an employee fails to maintain his financial good standing in a union which has negotiated a valid closed shop contract with the employer, the employee can be suspended from the union and removed from his job by the union. Thereafter in Pennsylvania such an employee will have no legal remedy for reinstatement either to union membership or to his former job.[121]

Majority rule, prevailing as it does in Pennsylvania, circumscribes an employee's right where it applies, to determine his own wage or working conditions and the individual member is bound by the terms, wages, hours, or conditions of employment of the labor agreement.[122] If the subject matter of the individual's employment contract is in conflict with or else is one within the area of mandatory collective bargaining, such an individual employment contract is unenforceable under Pennsylvania law.[123] Furthermore, an individual employee is estopped from arguing either the validity or the binding effect of a collective bargaining agreement consummated by his labor union which is the majority representative or the union's authority to negotiate that agreement, when he has accepted the fruits of the contract for any period of time without raising his voice in objection.[124]

Closely related to the property right in the right to work is the property right in the right to conduct one's own business. The Pennsylvania law has recently changed its direction in this respect. The right

118. Dorrington v. Manning, 135 Pa. Super. 194, 4 A.2d 886 (1938); Mische v. Kaminski, 127 Pa. Super. 66, 193 Atl. 410 (1937).

119. Gordon v. Tomei, 144 Pa. Super. 449, 19 A.2d 588 (1941).

120. Schwartz v. Laundry & Linen Supply Drivers Union, AFL, 339 Pa. 353, 14 A.2d 438 (1940); Brown v. Lehman, 141 Pa. Super. 467, 15 A.2d 513 (1940). *Accord,* Pennsylvania Labor Relations Act, 43 P.S. 211.6(1)(c).

121. Brown v. Lehman, note 120 *supra.*

122. Warner v. Unemployment Compensation Bd. of Rev., 396 Pa. 545, 153 A.2d 906 (1959).

123. This rule which was established in the leading case of J. I. Case Co. v. NLRB, 321 U.S. 332 (1944) is adopted by Pennsylvania. *Cf.* Grocery & Food Warehousemen Union v. Kroger Co., 364 Pa. 195, 70 A.2d 218 (1950).

124. Povey v. Midvale Co., 175 Pa. Super. 395, 105 A.2d 172 *cert. denied,* 348 U.S. 875 (1954); DeLuxe Game Corp. v. United Steel Workers of America, 77 D. & C. 221 (Pa. 1951).

to conduct one's own business is undoubtedly a property right within the protection of equity. A real problem is however posed by the precise issue involved as to whether a self-employed business man, whose daily conduct of business has a direct and negative impact on union employment standards in the same industry, should be insulated by the courts against union organizational activities and membership demands. Until several months ago, the answer to this issue would seem to have been settled in favor of unionization, despite the protected property right to conduct one's own business. In *Schwartz v. Laundry & Linen Supply Drivers' Union, Local 187* [125] the Supreme Court of Pennsylvania recognized a legitimate purpose, not in conflict with the public policy, for permitting union activity directed to requiring a self-employed person to become a union member and to require such a person to abide by lawful union rules and legitimate union standards of employment. The rationale of the *Schwartz* decision is anchored upon accepting the union's argument that any other approach could well result in material deterioration of union standards established for that industry. *Grimaldi v. Local No. 9, Journeymen Barbers Int'l Union, AFL-CIO*[126] holds to the contrary. In the *Grimaldi* case, a union was enjoined from picketing a one-man barber shop ostensibly for organization purposes. In Pennsylvania organizational picketing is recognized as picketing for a lawful purpose and is constitutionally protected by the guarantees of the first and fourteenth amendments of the Constitution of the United States and Article I, Section 7 of the Constitution of Pennsylvania.[127] Organizational picketing directed solely to persuading self-employed persons in a one-man business operation is enjoinable. The *Grimaldi* decision is unrealistic to the extent that the decision fails to give important weight to the direct impact of the activities of independent operators upon the union standard of wages and working conditions. The *Schwartz* decision would seem to be more in tune with the declared public policy of Pennsylvania to encourage collective bargaining. But this is an area where there are no blacks or whites, only grays. The change in climate of the times from 1939 to 1959 has undoubtedly had much to do with the *Grimaldi* decision. The fact situation in the *Grimaldi* case, as seen by the majority of the Pennsylvania Supreme Court, has also had its effect in that decision. The majority opinion found that the employer was met with an arrogant, aggressive union representative who un-

125. 339 Pa. 353, 14 A.2d 438 (1940). *Accord,* Friedman v. Blumberg, 342 Pa. 387, 23 A.2d 412 (1942).
126. 397 Pa. 1, 153 A.2d 214 (1959).
127. Pappas v. Local Joint Executive Bd., 373 Pa. 34, 96 A.2d 915 (1953); Tamagno v. Waiters & Waitresses Union, 373 Pa. 457, 96 A.2d 145 (1953).

necessarily and reprehensibly rode roughshod on the sensitivities of that employer.

The contractual employer-union relationship established, and thereafter in effect day-to-day, by the labor agreement is a valuable property right for both the employer and the union. It is well established by Pennsylvania law that this property right will be given a full measure of recognition and protection by the courts of equity. Pennsylvania courts will enjoin threatened, imminent, or current conduct which is continuous in nature and in violation of the terms of a valid labor agreement. Equitable relief has thus been granted to preserve the existence of the labor agreement, and to enforce the performance of the duties and obligations assumed thereunder by labor union and by employer.[128] Unlike the Norris-LaGuardia Act, the Pennsylvania Labor Anti-Injunction Act as amended will not prevent a court of equity from granting injunctive relief to enforce the terms of a labor contract, despite the fact that the enjoined activities in such a case arise from or involve an otherwise injunction-insulated "labor dispute." [129]

F. *Equitable Remedies.*

Equitable relief is normally considered to be limited to decrees granting specific performance or commanding cessation of circumscribed conduct. It is well established by Pennsylvania law, however, that once a court of equity has assumed jurisdiction of material matters involved in a suit, it will have the power to decide and grant an appropriate remedy for other distinct yet connected matters, within the area of the controversy.[130] This jurisdiction of equity to grant *complete* justice, includes the right to determine and award damages for tortious or illegal acts such as breach of contract[131] and the right, where such relief is necessary, to bring a controversy to an end.[132] The rule that equity will grant damages for tortious acts does not extend to all cases. Ordinarily, damages are within the province of the courts of law, rather than equity courts. Damages must be part of and a connected parcel of a controversy where the jurisdiction of equity attaches without question. Where damages are incidental, and equity jurisdiction

128. See note 51 *supra.*

129. 43 P.S. 206d(a). For the proposition that subterfuge will not be condoned, see comment in note 86 *supra* on the *DeWilde* case.

130. Wortex Mills, Inc. v. Textile Workers Union, 380 Pa. 3, 109 A. 2d 815 (1954); Bowman v. Gum, Inc., 327 Pa. 403, 193 Atl. 271 (1937).

131. See *Wortex* case, note 130 *supra.* The pleading for damages in the *Wortex* case was in the form of a general request for such other relief, in addition to injunctive relief, as the court might deem appropriate and necessary.

132. Haefele v. Davis, 15 D. & C.2d 113 (Pa. 1958).

has not otherwise attached, the claim for damages must be pursued in a court of law. Thus, in *Wagner v. International Brotherhood of Electricians, Local 1305*,[133] a former railroad employee filed suit in equity for reinstatement and to recover damages as a result of wrongful discharge in violation of seniority rights under a labor contract. The Supreme Court affirmed, per curiam, the trial court's opinion that the Railway Labor Act mandated that the instant discharge matter was within the exclusive purview of the National Railroad Adjustment Board. As a result, equity jurisdiction did not attach in that the damages claimed, if at all actionable, were redressable in a court of law rather than a court of equity.

An unjustified interference with contractual relations will be enjoined.[134] A court of equity will preserve the existence of a valid and subsisting labor agreement.[135] Such equitable relief as may be required will be granted to compel the parties to the contract to perform their duties and obligation thereunder[136] including the determination and the award of consequential damages[137] but not of punitive damages.[138] Equity will determine controversies growing out of trust fund agreements involving health, welfare, and pension funds which are established in intra state industry; and the jurisdiction so to do will vest in the Common Pleas Courts rather than in the Orphans Court which normally has jurisdiction over inter-vivos trusts.[139] Equity will compel the observance of safety rules established by statute and recognized

133. 395 Pa. 380, 150 A.2d 530 (1959).

134. Neel v. Allegheny County Memorial Park, 391 Pa. 354, 137 A.2d 785 (1958).

135. See note 51 *supra*.

136. *Ibid.* Equity will traditionally not, of course, grant a mandatory decree for positive specific performance of contracts of personal services. McMenamin v. Philadelphia Trans. Co., 356 Pa. 88, 51 A.2d 702 (1947); Philadelphia Ball Club v. Lajoie, 202 Pa. 210, 51 Atl. 973 (1902).

137. Fountain Hill Underwear Mills v. Amalgamated Clothing Workers Union, 393 Pa. 385, 143 A.2d 354 (1958) holds that a pending action at law for damages will not bar a later suit in equity, where equitable jurisdiction would otherwise attach in the controversy involving both actions.

138. A painstaking search has resulted in failure to find Pennsylvania decisional authority directly on point. Equity should not award punitive damages by the very nature of its jurisdiction, namely, to restore to status quo. Exemplary damages are not awarded for actual damages. The *Wortex* decision cited in notes 130 and 131 *supra* did not award punitive damages. RESTATEMENT, CONTRACTS § 342 (1932) states that "Punitive damages are not recoverable for breach of contract" and is cited with approval in Krapta v. Yelen, 42 Luz. L. Reg. 104 (Pa. 1951). The Annotation in 48 A.L.R. 2d 947 (1956) declares that the *Wortex* decision impliedly holds that equity in Pennsylvania will not grant punitive damages, that Pennsylvania courts on the whole are extremely reluctant to allow punitive damages under any theory, and where granted, the cases sound in law rather than a suit in equity. See International Elec. Co. v. N.S.T. Metal Products Co., 370 Pa. 213, 88 A.2d 40 (1952); Thompson v. Swank, 317 Pa. 158, 176 Atl. 211 (1934); Mitchell v. Randall, 288 Pa. 518, 137 Atl. 171 (1927); Rider v. Water Power Co., 251 Pa. 18, 95 Atl. 803 (1915).

139. See note 50 *supra*.

in a labor agreement.[140] Finally, malicious tortious intervention with the right to work[141] and with the right to conduct a business[142] is redressable at equity, and equitable relief including damages will be granted by the courts.[143]

The issue of parties to equitable actions present several vexing problems. For instance, what is the definition of indispensible or necessary party? May an individual employer enforce terms of the labor agreement which have particular and direct impact upon him? What is the status and right of third party beneficiaries? These questions, among others, will be discussed under procedural aspects of Pennsylvania law in order to avoid duplication, albeit some aspects of these questions involve the problem of available equitable remedies.

140. King Unemployment Compensation Case, 183 Pa. Super. 629, 133 A.2d 581 (1957).
141. See note 118 *supra*.
142. See note 125 *supra*.
143. See notes 130 and 131 *supra*.

[TO BE CONCLUDED]