1955

The Labor Injunction - Weapon or Tool

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The Labor Injunction—Weapon or Tool?

*by Robert M. Debevec**

A. Definition.

AN INJUNCTION is an order or writ issued by a court of equity commanding an individual or group of individuals to do or refrain from doing certain acts.[1] These certain acts may pertain to any one of a variety of matters. Here we are concerned only with the injunction as it is applied to labor organizations or individuals to prevent them from doing or cause them to do certain acts in their relationship to management. Whether these acts are lawful or unlawful is the point which decides whether or not an injunction will be allowed.

The question arises as to who has jurisdiction in an injunction hearing. Under Article III of the Constitution, the Federal Court has judicial powers in all controversies in which the United States is a party and in all cases between citizens of different states.

Supreme Court interpretations of Acts of Congress are partially the reason that most important labor controversies have been tried in Federal Courts. For instance, the Sherman Act[2] was interpreted to include labor as well as capital when determining if an organization was a combination and/or a conspiracy.[3] As this Act provided that a combination formed to restrain trade or interstate commerce was illegal, the Federal Courts assumed jurisdiction in all cases involving interstate commerce.

This attitude brings up many interesting questions: does picketing restrain interstate commerce; does paying strike benefits restrain interstate commerce; is use of a union label, membership in a union, striking and boycotting restraining commerce? The early history of the use of the injunction in labor disputes

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1 Bouvier's Law Dictionary, p. 549.

2 Act of July 2, 1890, c. 647, par. 1-8, 26 Stat. 209; Amended 3-3-11, c. 231, 36 Stat. 1167, Act of Aug. 17, 1937, c. 690, 50 Stat. 693. U. S. Code, title 15, par. 1-7, 15.

3 United States vs. Workingmen's Amalgamated Council of New Orleans, 54 F. 994, 26 LRA 158; Loewe vs. Lawlor (1908), 208 U. S. 274; Lawlor vs. Loewe (1915), 235 U. S. 522, 35 S. Ct. 170.

shows that the Federal Courts have usually held in the affirmative.[4]

There are three general types of injunction:

1) The Temporary Restraining Order. This temporary restraining order was originally granted in a proceeding in which the union or other party defendant received no notice and had no opportunity to be heard. A sworn complaint was filed by the plaintiff and affidavits of witnesses to the alleged complaint were also filed. This was considered sufficient procedure to have a temporary restraining order issued.

2) The Temporary Injunction. The plaintiff filed a motion for temporary injunction and the defendant received notice to appear and show cause why the injunction should not be issued. Affidavits were filed by both parties involved.

3) The Permanent Injunction. After a temporary injunction was granted the case was set down for trial and the complaint was either dismissed or a permanent injunction was issued. Either party could appeal to a higher court and often the final decision was made in the United States Supreme Court.

In other words an injunction may be the end sought in an action (permanent) or it may be a remedy employed in the action to maintain a status while a case is pending to make the final judgment worth while to the plaintiff. (Temporary.) The only difference between the restraining order and the temporary injunction is that the former is an order issued ex parte (no hearing of the defendant) while the latter shows the defendant what this order is.

The crippling effects of an injunction to a strike can readily be seen. The issuance of a restraining order or temporary injunction requires that the situation revert to its former status. This meant for many years that picketing, strike pay benefits and appealing to the public was banned—and even if the final injunction was not allowed after a trial, the litigation usually was so prolonged that the most important element of a strike, namely speed, and therefore the strike itself, was lost.[5]

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[4] Gompers vs. Buck Stove and Range Co. (1911), 221 U. S. 418, 31 S. Ct. 492.

[5] Duplex Printing Co. vs. Deering (1921), 254 U. S. 443, 41 S. Ct. 172.

B. History and Background.

An examination of the history of the injunction shows that it is an ancient device used centuries ago in the British Courts of Chancery to avoid the threat or continuance of an irreparable injury to land. However it became convenient as time went on to term as "property" other interests which were deemed to need protection.[6]

Many modern issues with their newer complications became hidden under the misleading simplicity of old terms. As modern law is evolved over the years, the fact is often overlooked that present day conditions are not the same as they were when the law was originally made. Thus the later courts began to take the viewpoint that "property" was always meant to include business rights and the right to *acquire* property and conduct a business. Nothing could be further from the truth.

This concept is pointed out in the Supreme Court decision in the *International News Service vs. Associated Press* case in 1918:[7] "The rule that a court of equity concerns itself only in the protection of property rights treats *any* civil rights of a pecuniary nature as a property right . . . and the *right* to acquire property by honest labor or the conduct of a lawful business is as much entitled to protection as the right to guard property already acquired."

Thus the term "property" and its connotations became the nucleus which saw the build-up of the labor injunction as a powerful and devastating weapon on the part of employers in the United States.

One of the first cases in which management attempted to apply the injunction against labor in the United States was in New York in the *Johnston Harvester Co. vs. Meinhardt* case in 1880.[8] The courts held, however, that the facts found did not show any wrongful conduct on the part of the strikers.

This case proved to be a springboard for the injunction because from it the employers soon learned how to present their cases and the type of evidence required by the courts. The court had held that if the acts described by the complainant in this case

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6 Springhead Spinning Co. vs. Riley (1868), L. R. Eq. 551.

7 248 U. S. 387.

8 (N. Y. 1880) 60 How. Pr. 168.

(enticing laborers from the plaintiff's shops) were proved to be unlawful, an injunction would be proper relief.

Management attorneys soon became adept in proving these points and the injunction boom was on in full force.

C. Injunction Under the Sherman Act.

The pronouncement of the Supreme Court in the Pullman strike of 1894 removed any doubt as to the availability of the injunction in labor controversies.

This was the famous case of *U. S. vs. Debs*[9] and was the result of a strike called by the employees of the Pullman Car Co. who were affiliated with the American Railway Union. Some of the facts in this case are presented here to show how the Supreme Court's concept of the Sherman Anti-Trust Act was used to further government by injunction.

The Pullman Car Co. employees had walked out of the plant (beating Mr. Pullman's plan to lock them out by a few hours) because of the company's failure to reduce rent on company-owned housing and especially because of the firing of three members of the union's grievance committee.

After unsuccessful attempts to negotiate a settlement with the company, the strikers requested that the American Railway Union order a sympathy strike.

Eugene Debs, head of the American Railway Union announced a boycott on Pullman cars on June 25, 1894, refusing to allow members of his union to inspect, switch or haul these cars on any railroad.

The railroad officials countered by discharging all employees who refused to haul Pullman cars and also by attaching mail cars to Pullman cars so that when a Pullman car was cut out, the mail car was automatically cut out. These moves resulted in a general strike against the railroads and prepared the way for federal interference.

On July 2, 1894, the attorney general filed a complaint charging the American Labor Union and Eugene Debs with a conspiracy to interfere with and restrain regular transportation, obstruct transportation of the U. S. mails and prevent the employment of persons.

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[9] (C. C. N. D. Ill. 1894) 64 F. 724 (1895), 158 U. S. 564; 15 S. Ct. 900; 39 L. Ed. 1092.

On these grounds (later held to be a conspiracy to restrain interstate commerce in violation of the Sherman Anti-Trust Act) a temporary injunction was secured in the U. S. Circuit Court for the Northern District of Illinois forbidding the union to interfere with the business of the railroads entering Chicago, carrying U. S. mails or engaged in interstate commerce.[10]

When the injunction was issued, President Cleveland was persuaded to send Federal troops to the scene. The presence of these troops and hired deputies of the railroads provoked rioting on the strike scene.

Debs and other union leaders were arrested and indicted on contempt charges for violating the injunction by causing rioting and attempting to provoke a general strike in Chicago.[11] The strike was officially called off on August 5, 1894.

When the decision of the lower courts on the legality of the injunction and indictments was upheld by the Supreme Court in 1895[12] the use of the injunction as a weapon against strikes received great impetus. Its use was broadened as Justice Brewer in his official opinion defined property to mean not only "physical property" but any intangible right including employer-employee relationship, merchant-customer relationship and mail passage or shipment of goods in interstate commerce.[13]

While this strike ended disastrously for labor and caused the injunction to be used more extensively in labor disputes, subsequent investigation of means and methods used by railroad officials to accomplish their ends in this case caused the beginning of a more tolerant public policy towards labor. The labor policy in the Democratic Party platform of 1896 stated: "We denounce arbitrary interference by Federal authorities in local affairs as a violation of the Constitution of the United States and a crime against free institutions . . . and we especially object to government by injunction as a new and highly dangerous form of oppression by which Federal judges in contempt of the laws of the states and the rights of citizens, become at once legislators, judges and executioners." [14]

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10 (C. C. N. D. Ill. 1895) 65 F. 210.

11 U. S. vs. Debs, 65 F. 210.

12 In Re Debs, 158 U. S. 564.

13 In Re Debs, supra, at page 577.

14 "Unions Before the Bar," p. 42, Lieberman, New York Harper, 1950.

Labor, of course, learned to hate and fear the injunction. Before 1914 there was no legislation to curb or restrict its use. Labor feared that its indiscriminate use would result in the loss of the rights of labor, especially the right to strike, because a judge could restrain a union from either calling a strike or conducting it. The decision to grant or deny an injunction rested solely upon the discretion or prejudice of the individual judge.

D. Injunction Under the Clayton Act.

The Clayton Act, passed in 1914, had some provisions in it concerning labor and the injunction:

1) The most important was Section 6 which declared that the labor of human beings was not a commodity or article of commerce and courts were forbidden to interpret the anti-trust laws to prevent the existence of unions nor that unions were a conspiracy in restraint of trade.

2) Unless the affidavit filed by the plaintiff showed specific facts that immediate and irreparable injury, loss or damage would result to the complainant, no preliminary injunction (restraining order) could be issued without notice. A temporary restraining order expired in ten days unless heard and acted upon within that time.

3) No restraining order could issue unless the plaintiff gave bond.

4) Every injunction or restraining order had to specifically and in detail give the reason for its issuance and was binding only upon the actual parties to the suit, their officers, agents, servants and employees.

5) An injunction or restraining order could be granted in a dispute between employer and employee, between employees or between union members and job-seekers when terms or conditions of employment were involved only if it could be proved in detail that irreparable injury for which there was no lawful recourse was threatened. If the injunction *was* issued it could not forbid work stoppage or peaceful encouragement of work stoppage. It could not prevent payment of strike benefits nor the right of strikers to meet and discuss the situation.[15]

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[15] Act of Oct. 15, 1914, C. 323, par. 1, 38 Stat. 730. U. S. Code, title 15, par. 12 et seq.; title 29, c. 5, par. 52.

This Act was hailed as the answer to labor's dilemma in attempting to carry out its legitimate functions and aims. Samuel Gompers, president of the A. F. L., declared that it was the Industrial Magna Charta.[16]

Labor's jubilance was shortlived, however. In the very first case argued under this Act before the Supreme Court of the United States, the decision went to the plaintiff. This was the *Duplex Printing Press Co. vs. Deering* case.[17]

This strike was called in August, 1913; an *ex parte* injunction was obtained in April, 1914, and the final decision was handed down by the United States Supreme Court in January, 1921. This delay in itself was disastrous to the individual strike, but the real blow to labor was the Supreme Court's interpretation of the Clayton Act. This high court held that the intention of Congress in writing the Act was to purposely make certain sections of it ambiguous so that labor would believe it was achieving a far reaching instrument for its protection whereas actually there was no change in the existing state of affairs. The strike, boycott, etc. was still a restraint of interstate commerce and illegal by this judicial interpretation.

The decision in this case led to many other judicial findings which completely destroyed the benefits of this Act for labor.

E. The Norris-LaGuardia Act.

Labor organizations started a new campaign for further clear-cut legislation to limit the use of the injunction in labor disputes. This agitation finally resulted in the passage of the Anti-Injunction Act of 1932, known as the Norris-LaGuardia Act.[18]

An unusual feature of this Act was that the public policy of the United States in regard to the employer-employee relationship and labor controversies was definitely defined.

This declaration of policy by the Congress was put into the Act as a guide to the courts in their interpretations of it. This was to prevent the recurrence of the unusual interpretations by the courts of the Sherman and Clayton Acts. The judiciary was no longer required to decide what the *intent* of the Congress was in writing the law.

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16 "Prentice-Hall Labor Course," par. 1043, page 1023, 1950, Prentice-Hall, Inc.

17 (1921) 254 U. S. 443; 41 S. Ct. 172.

18 Act of March 2, 1932, c. 90, 47 Stat. 70, U. S. Code, Title 29, sec. 101 et seq.

The policy declaration established labor's right to collective bargaining and the legality of unions and collective bargaining.

The Act curbed the power of the Federal courts to issue injunctions and prescribed specific procedures to follow. The bill did not take away the power to issue injunctions when an unlawful act, violence or fraud was being enacted.

Although the Act only restricted the power of injunction in the Federal Courts, many states adopted a similar policy in their legislatures. A Federal Court has jurisdiction when the parties involved live in different states or when a question involving rights under the Constitution of the United States arises. The Federal Court does not have jurisdiction unless the amount involved is over $3,000.00.

Under Section 4 of the Act, no court of the United States has jurisdiction to issue a restraining order or temporary injunction or permanent injunction in any case involving or growing out of a labor dispute, to prohibit any person or group of persons participating in or interested in such dispute from doing either individually or together any of the following acts:

1) Ceasing or refusing to work or remain employed.

2) Being a member of any labor or employer organization.

3) Paying or withholding strike or unemployment benefits.

4) Aiding, lawfully, any person involved in any labor dispute lawsuit.

5) Picketing not accompanied by fraud or violence.

6) Assembling peacefully to promote an interest in a labor dispute.

7) Giving intent to do any of the above acts.

8) Agreeing with other persons to do or not to do any of the above acts.

9) Advising, urging, inducing or causing to do any of the above specified acts without fraud, violence or threats.

Under section 7 of the Norris-LaGuardia Act the following conditions must be met before a temporary or permanent injunction may be granted in a labor dispute:

1) Both parties and their witnesses must be heard in open court.

2) Cross examination of both sides must be allowed.

3) An unlawful act will be or has been committed by the defendant of irreparable injury of which the complainant has no relief from the law.

It is required that proper notice be given to the defendant unless the plaintiff under oath testifies that he will suffer irreparable injury to his property if a notice is given. In this case a temporary restraining order may be issued for five days but the plaintiff is required to file a bond sufficient to cover all of the defendant's expenses if the injunction is found to be unjustified.

Section 13 of this Act is interesting in that it defines a "labor dispute" as any controversy concerning conditions of employment regardless of whether or not the parties involved are employer or employee. Early decisions under this Act interpreted section 13 to mean that it did not apply to disputes between employee unions to which the employer was not a real party.[19] Later decisions interpreted it to indicate that the disputes did not have to arise between those who stood in the proximate relationship of employer and employee.[20]

One of the most famous cases involving an injunction under the Norris-LaGuardia Act was the *United States vs. John L. Lewis* case in 1946.[21]

After the Second World War, many strikes broke out as labor organizations attempted to raise wage levels to meet the rising cost of living. In April, 1946, the United Mine Workers under John L. Lewis failed to report for work, although no official strike was called. This occurred while Lewis and the mine operators were attempting to negotiate a new agreement. No coal was produced in April. On May 4, President Truman declared that the coal dispute was a national disaster. He tried to have the dispute submitted to arbitration, but both parties rejected this suggestion.

The mines were seized under the Smith-Connally Act,[22] on May 21 and the government took over their operation. A week

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19 United Electric Coal Co. vs. Rice (7 Circ. 1925), 80 F. (2d) 1, cert. denied, 297 U. S. 714, 56 S. Ct. 500.

20 Senn vs. Tile Layers Protective Union, Local No. 5 (1937), 301 U. S. 468, 57 S. Ct. 857; Lauf vs. G. Shinner and Co. (1938), 303 U. S. 323, 58 S. Ct. 578.

21 67 S. Ct. 677.

22 Executive Order No. 9728, May 21, 1946, U. S. Code Cong. Service, 1946, p. 1803; War Labor Disputes Act, par. 1-11, 50 U. S. C. A. Appendix, par. 1501-1511.

later the government entered into an agreement with the United Mine Workers with the provision that the agreement was to last as long as the government was in possession.

In October, 1946, Lewis requested that the contract be reopened for further negotiations. The government refused to negotiate. It held that the agreement was in effect as long as the mines were under governmental control.

Lewis informed the government that their contract would be terminated on November 20, 1946. On November 18, the government served the union and John L. Lewis personally with a temporary injunction issued by Justice T. Alan Goldsborough of the United States District Court for the District of Columbia, restraining them from breaking their agreement, pending a hearing before the court.

The union ignored the order and the workers stayed away from the mines on November 20. The government petitioned that Lewis and the union be punished for contempt of court for violating the injunction.

The union held that under the Norris-LaGuardia Act this was a labor dispute as defined in that Act and therefore the court had no power to issue an injunction.

Justice Goldsborough held that this Act was not meant to apply to the government when it was in the role of an employer. He found that the defendants were guilty of contempt and fined the United Mine Workers $3,500,000 and John L. Lewis $10,000.

On January 14, 1947, the case was argued on appeal before the United States Supreme Court.[23]

The Supreme Court ruled that the Norris-LaGuardia Act prohibited the issuance of injunctions in labor disputes involving "persons" in their relationship as employers and employees but the government could not be considered in the same position as private persons or employers. Hence the Norris-LaGuardia Act did not apply. The fine against the union was reduced to $700,000 but Lewis' fine of $10,000 was allowed.

The dissenting Court opinions stated that this *was* a labor dispute and that the Norris-LaGuardia Act *should* apply because the Act did not specifically exclude the government from the role of employer. However, the majority, five to four, ruled that the Act was not applicable in this case.

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[23] U. S. vs. John L. Lewis, supra.

F. The Taft-Hartley Act.

In 1947, the Taft-Hartley Act[24] was formulated and made law by Congress. Several provisions were made in this Act concerning injunctions:

1) All secondary boycotts are prohibited and can be made the grounds for an injunction.

2) The National Labor Relations Board may seek injunctions to stop unfair labor practice by a union or employer and *must* seek injunctions against *all* secondary boycotts and some jurisdictional disputes. The court may grant such injunctions without regard to any anti-injunction statutes. The statutes referred to are the Clayton and Norris-LaGuardia Acts.

3) When a strike which may imperil the national health or safety is threatened, the president may apply for an eighty-day injunction.

G. Summary and Conclusions.

The history of the labor injunction follows closely the history of labor's struggle for organization and legal recognition.

When injunctions were first used so freely in the United States, the beliefs of many judges and other citizens were based on the old concept of master-servant relationship in which the servant had few rights.

Public opinion gradually came to recognize that labor had rights of its own and this was reflected in the passage of such laws as the Sherman and Clayton Acts.

Judicial opinion was slower to react to the change in the status of labor. This was shown in the interpretations of these Acts. The laws were used to block the activities of the unions on the grounds that either the ends sought or the means used in a particular strike were unlawful interference with interstate commerce. This blocking was done through the use of the labor injunction.

The courts finally had to be guided through the intricacies of law interpretation without prejudice, by the passing of the Norris-LaGuardia Act which left little doubt that labor and its unions had certain rights which could not be disregarded by judicial whim.

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[24] Public Law 101—80th Congress, Chapter 120—1st Session—H. R. 3020.

As the unions increased in power and prestige, use of the labor injunction declined.

The injunction has lost its power as a weapon of the employer over the employee. The judicial powers have been carefully narrowed and defined so that controversies over interpretations of the law are not so frequent. Labor's rights are now clearly enumerated and pecuniary penalties for wrongfully brought injunctions has caused them to become as unpopular with management as they formerly were with labor.

Anti-injunction laws benefit both management and labor in the long run because without the threat of the injunction hanging over it, labor can afford to relax its defensive attitude towards management. Realizing that it is no longer forced to compete with the law as well as management, it can attempt to understand and analyze some of the employer's problems.

The employer is forced by law to recognize the legality of the union and must realize that the success of his enterprise is dependent on mutual co-operation.

The employer and employee must, because of their positions, regard each other with an air of friendly antagonism. However, when it is known that there is no powerful third party taking sides with one against the other it is possible to negotiate intelligently, logically and openly.

Since injunctive bargaining is no longer the fashion, collective bargaining becomes the logical answer for both factions.