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The Labor Injunction in Pennsylvania - Its Background and Present Status

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THE LABOR INJUNCTION IN PENNSYLVANIA—ITS BACKGROUND AND PRESENT STATUS

The English courts early adopted the position that an injunction would issue against combinations of workers who sought to use a united front to attain their ends.[1] Two concepts which had a permanent effect in American law arose during this period as to the court's view on the collective action of labor—the doctrines of conspiracy and of restraint of trade.[2] Finally, in England under the English Trade Disputes Act of 1906,[3] the right of labor to unite in trade union activities was insured.

The earliest American case, following the early English view,[4] stated that, "A combination of workmen to raise their wages may be considered in a two-fold point of view: one is to benefit themselves . . . . the other is to injure those who do not join their society. The rule of law condemns both."[5] The courts almost immediately abandoned this harsh attitude and began to adopt a more liberal position toward the activities of labor groups.[6]

Within more recent years, Congress and the state legislatures have aided labor in its struggle for greater freedom of action. The first anti-injunction statute was enacted in Kansas in 1913.[7]

The Clayton Act,[8] passed by Congress in 1914, was a decided move in this direction. The conservatism of the courts, however, soon destroyed any marked effects that could have been derived from this "Magna Charta" of labor or those statutes[9] modeled after it.[10] The United States Supreme Court, in *Duplex Printing Press Co. v. Deering*,[11] held that the Act applied only to direct disputes be-

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[1]R. v. Journeymen—Taylors of Cambridge, 8 Modern 10 (K. B. 1721), and R. v. Eccles, 1 Leach C. C. 274 (K. B. 1783).

[2]FRANKFURTER and GREENE, THE LABOR INJUNCTION (1930) 2.

[3]6 Edw. VII, c. 47 (1906): "4. ****(1) An action against a trade union, whether of workmen or masters, or against any members or officials thereof on behalf of themselves and all other members of the trade union in respect of any tortious act alleged to have been committed by or on behalf of the trade union, shall not be entertained by any court."

[4]FRANKFURTER and GREENE, THE LABOR INJUNCTION (1930) 2.

[5]Philadelphia Cordwainers Case (1806), 3 COMMONS and GILMORE, DOCUMENTARY HISTORY OF AMERICAN INDUSTRIAL SOCIETY (1910) 59, 233.

[6]FRANKFURTER and GREENE, THE LABOR INJUNCTION (1930) 3.

[7]Van Dusen, *The Progress of Labor Law* (1939), 14 TEMPLE L. Q. 1 at 3.

[8]38 Stat. 730 at 738 (1914), 29 U. S. C., sec. 52, (Sec. 20, providing in part: "No restraining order or injunction shall be granted by any court of the United States, or a judge or judges thereof, in any case . . . involving, or growing out of, a dispute concerning terms or conditions of employment unless necessary to prevent irreparable injury.")

[9]WITTE, THE GOVERNMENT IN LABOR DISPUTES (1932) 270-272; see note in (1935) 33 MICH. L. REV. 777.

[10]See comment by Vogt in 35 MICH. L. REV. 1320 at 1321 (1937); Chernot, *The Labor Injunction in Minnesota* (1940) 24 MINN. L. REV. 757 at 773.

[11]254 U. S. 443, 40 Sup. Ct. 172, 65 L. Ed. 349 (1921).

tween an employer and an employee and thus robbed the Act of much of its effectiveness.[12] In a second famous case, *Truax v. Corrigan*,[13] the court held an Arizona statute,[14] based on the Clayton Act, unconstitutional as denying an employer the equal protection of the law and depriving him of property without due process of law. State courts likewise narrowly construed the similar state statutes.[15]

A second effort to aid the activities of labor was made with the passage by Congress of the Norris-LaGuardia Act[16] in 1932. Corresponding statutes were soon adopted in many states.[17]

The United States Supreme Court removed any apprehensions as to whether the new act was to be "construed" into ineffectiveness by its decisions in the *Lauf v. Shinner*[18] and *New Negro Alliance v. Sanitary Grocery Co.*[19] cases. In the former case a struggle by an outside union for unionization of a shop, none of whose employees were members of the organizing union, and in the latter an agitation by members of a Negro racial protective organization to compel employment of negro workers were held to be "labor disputes" within the meaning of section 13 of the Norris-LaGuardia Act and thus not enjoinable. These and similar cases insure labor today of greater freedom of action from federal injunctions than it has ever had before.[20]

PENNSYLVANIA

Pennsylvania courts early developed the injunctive weapon against labor movements and collective activities. Following the earliest American case in 1806,[21] indictments and convictions against laborers who acted in unison were sustained on the basis of criminal conspiracies in 1815[22] and in 1821.[23] The tendency of the courts as shown by the case in 1821 was to gradually withdraw from its early very rigid restrictions on labor organizations and activities. In 1869[24] and 1872,[25] statutes were passed in Pennsylvania, as in other states during that period, to per-

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[12]See comment by Vogt in 35 MICH. L. REV. 1320 at 1321 (1937).
[13]257 U. S. 312, 42 Sup. Ct. 124, 66 L. Ed. 254, 27 A. L. R. 375 (1921).
[14]Ariz. Rev. Stat. (1913), sec. 1464 (Laws of 1913, 2d spec. sess., c. 41).
[15]WITTE, THE GOVERNMENT IN LABOR DISPUTES 272-273 (1932).
[16]47 Stat. 70 (1932), 29 U. S. C., sec. 101-115.
[17]Similar statutes were originally adopted in Arizona, Colorado, Idaho, Illinois, Indiana, Kansas, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Montana, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, Utah, Washington, Wisconsin, Wyoming.
[18]303 U. S. 323, 58 Sup. Ct. 578 (1938).
[19]303 U. S. 552, 58 Sup. Ct. 703 (1938).
[20]Comment by Ellman, 36 MICH. L. REV. 1146 at 1147 (1938).
[21]See note 5, *supra*.
[22]Pittsburgh Cordwainers, Commonwealth v. Morrow, 4 COMMONS and GILMORE, DOCUMENTARY HISTORY OF AMERICAN INDUSTRIAL SOCIETY (1910) 249.
[23]Commonwealth v. Carlisle, Brightly 36.
[24]Act of May 8, 1869, P. L. 1260, sec. 1, 43 PS sec. 191.
[25]Act of June 14, 1872, P. L. 1175, sec. 1, 43 PS sec. 200, sec. 2 repealing section.

mit labor to organize for certain definite purposes, but the courts construed these statutes strictly.[26]

Within more recent years a statute was passed in 1931[27] which limited the power of the court of equity to grant injunctions against labor. The major provisions of the Act were adopted in the later and more complete Anti-Injunction Act of 1937.[28]

The Pennsylvania Anti-Injunction Act of 1937 was modeled after the federal Norris-LaGuardia Act.[29] The Pennsylvania Act was held to be constitutional in 1938 in *Lipoff v. United Food Workers Union*,[30] in which the county court held that the case of *Truax v. Corrigan, supra,* was no longer binding because "intervening dicta of the appellate courts on supervening circumstances indicate that those courts would not hold today as they did before."[31]

This act was a companion act to the Pennsylvania Labor Relations Act[32] which with its amendment of 1939[33] has been fully discussed in a recent article in the Dickinson Law Review.[34] Together, these two acts and their amendments present to a large degree a composite picture of the labor injunction in Pennsylvania today.

The Pennsylvania Anti-Injunction Act of 1937, as did the earlier Norris-LaGuardia Act,[35] forbade the courts to exercise their traditional equity jurisdiction for the protection of property from irreparable damage during a "labor dispute." The major problems[36] arising from this statute center on the meaning of "labor dispute" as defined by the Pennsylvania Act[37] and similar acts. A liberal interpre-

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[26]FRANKFURTER and GREENE, THE LABOR INJUNCTION (1930) 4, 137.

[27]Act of June 23, 1931, P. L. 926.

[28]Act of June 2, 1937, P. L. 1198, 43 P. S. sec. 206.

[29]Chernov, *The Labor Injunction in Minnesota* (1940), 24 MINN. L. REV. 757 at 774; Van Dusen, *The Progress of Labor Law* (1939), 14 TEMPLE L. Q. 1 at 3.

[30]33 Pa. D. & C. 599 (1938).

[31]See note in (1937) 86 U. OF PA. L. REV. 546.

[32]Act of June 1, 1937, P. L. 1168, 3 PS sec. 13.

[33]Act of June 9, 1939, P. L. 293, 43 PS sec. 211.

[34]Nicholas Unkovic, *The Pennsylvania Labor Relations Acts* (1939), 44 DICK. L. REV. 16.

[35]Van Dusen, *The Progress of Labor Law* (1939), 14 TEMPLE L. Q. 1 at 3.

[36]Note in (1938) 87 U. OF PA. L. REV. 235; Comment by Ellman (1938), 36 MICH. L. REV. 1146 at 1147; Comment by Vogt in (1937), 35 MICH. L. REV. 1320; Chernov, *The Labor Injunction in Minnesota* (1940), 24 MICH. L. REV. 757.

[37]Act of June 2, 1937, P. L. 1198, 43 PS sec. 206: "Section 3. When used in this act and for purposes of this act—(a) A case shall be held to involve or to 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 employes of the same employer, or who are members of the same or an affiliated organization of employers or employes, whether such dispute is (1) between one or more employers or associations of employers and one or more employes or associations of employes; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employes or associations of employes, and one or more employes or associations of employes; or when the case involves any conflicting or competing interests in a 'labor dispute' (as hereinafter defined) of persons participat-

tation of "labor dispute" and other provisions of the act by the courts has resulted in giving labor a large measure of freedom of action but has also brought to light some of the weaknesses of the statute. Both employers and non-union employes, for example, were left in the unfortunate position where a minority union could exert pressure on the employer to force the majority of workers who might have no desire to join the union to become members by threatening the employer with a strike and similar methods against which the employer could not use the injunctive weapon.[38] As a result the employer would be forced to violate Section 6 of the Pennsylvania Labor Relations Act[39] which provides in part that "it shall be an unfair labor practice for an employer—(a) to interfere with, restrain or coerce employees in the exercise of their rights guaranteed in this act."

In recognition of this and other weaknesses of the Statute of 1937, the state legislature passed the Amendment in 1939[40] which gave, under certain circumstances, added protection to employers and non-union workers. Similar laws were also passed in the same year in Oregon, Wisconsin, Michigan, and Minnesota.

The amendment provides that the Anti-Injunction Act of 1937 shall not apply under anyone of four situations: (a) where the labor dispute is in violation of a valid subsisting contract as provided by the Pennsylvania Labor Relations Act or the National Labor Relations Act of 1935[41] and the employer has not committed an unfair labor practice or violated any of the terms of the contract; (b) where one labor union or its members, etc., seeks to coerce the employer to compel or require his employes to prefer one union over a rival or to join a union that does not represent a majority of the workers; (c) where a labor union or its members, etc., seek to force the employer to violate the Pennsylvania Labor Relations Act of 1937 or the National Relations Act of 1935; and (d) where a "sit-down" strike in effect exists.

The Pennsylvania Labor Relations Act was also amended by the state legislature in 1939 so as to offer a greater amount of protection to the employer and non-union employes.[42] The industrial unrest and strikes just prior to the enactment of the above-mentioned statutes undoubtedly accounted for their passage in 1939.[43]

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ing or interested' therein (as hereinafter defined). . . . (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 or concerning employment relations or any other controversy arising out of the respective interests of employe and employer, regardless of whether or not the disputants stand in the proximate relation of employer and employe, and regardless of whether or not the employes are on strike with the employer."

[38]Van Dusen, *The Progress of Labor Law* (1939), 14 TEMPLE L. Q. 1 at 5, 6.

[39]Act of June 1, 1937, P. L. 1168, 3 PS sec. 13.

[40]Act of June 6, 1939, P. L. 302, 43 PS sec. 206D.

[41]49 Stat. 452 (1935), 29 U. S. C. A. sec. 151 *et seq.*

[42]Van Dusen, *The Progress of Labor Law* (1939), 14 TEMPLE L. Q. 1 at 10-12.

[43]Pando v. Bartenders' International Alliance, 37 Pa. D. & C. 169, at 180 (1940).

Several lower court cases throw light on the manner in which the amendment of 1939 will be interpreted by the courts. Of the four situations where the Anti-Injunction Act of 1937 was stated not to apply, these lower court cases have ruled on all but the last.

Two cases, *Comerford-Publix Theatres Corp. v. United Theatrical Alliance of the C.I.O.*[44] *and Pando v. Bartenders' International Alliance*[45] clarify the first situation—that labor unions which attempt to force an employer to breach a valid contract with another union are subject to an injunction. The court in the former case stated on page 702:

"By the express provisions of the amending Act of 1939, *supra,* the courts of equity are allowed to resume their ancient jurisdiction and protect employers who try to carry out the provisions of their contract with a recognized labor union."

However, a limitation was placed upon this protection granted to the employers in *Tankin v. Hotel and Restaurant Workers Industrial Union,*[46] where the court laid down this view, on page 542:

"An employer cannot terminate a labor dispute by refusing to recognize or bargain with his disputants and expect to secure the protection afforded by his act by entering an agreement with another association of employes." (i. e. Entering the contract with the latter union will not protect the employer in regard to the original dispute with the first union).

The second situation listed above is adjudicated in *Hudson Recreation Co. v. Bowling, Billiard and Athletic Employees' Union*[47] and *Flashner v. Amalgamated Meat Cutters & Butcher Workmen of North America,*[48] where the court states, on page 348:

"However, the legislature by the amending Act of 1939 expressed a complete reversal of policy on this point by the provision (Section 4(b)) that the Act of 1937 . . . . shall not apply where a majority of employees have not joined a labor organization, etc."

The third situation is ruled upon in *Comerford-Publix Theatres Corp. v. United Theatrical Alliance, supra, Hudson Recreation Co. v. Bowling, Billiard & Athletic Employes of the C.I.O., supra,* and *Pando v. Bartenders' International Alliance, supra.* In these cases the court held that unions would be subject to injunction for attempting to force their employers into violations of the Pennsylvania Labor Relations Act.

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[44] 39 Pa. D. & C. 699 (1940).
[45] 37 Pa. D. & C. 169 (1940).
[46] 36 Pa. D. & C. 537 (1939).
[47] 39 Pa. D. & C. 655 (1940).
[48] 37 Pa. D. & C. 337 (1939).

Within recent months the Pennsylvania Supreme Court has handed down three important decisions which may establish important precedents and bring about decided changes in the field of injunctive relief against labor.

In *Western Pennsylvania Hospital v. Lichliter,*[49] the Court in adopting the lower court's opinion held, in effect, that the Labor Anti-Injunction Act of 1937 as amended in 1939 did not apply where a group of hospitals sought to enjoin the actions of the Pennsylvania Labor Relations Board and a union from attempting to unionize the hospitals. Two reasons were given in the opinion for adopting this view. These reasons are set forth on page 387 as follows:

". . . . Giving the words 'industry, trade, craft or occupation' their commonly accepted meaning, we feel that they do not include the operations of a hospital."

"Even though the words of the statute be interpreted as broad enough to include the operations of a hospital, we do not think that the legislature intended such a result . . . . It is a question of protecting the health, safety and, in many cases, the very lives of those persons who need the service a hospital is organized to render . . . ."

How far the doctrine of this case will be extended is merely a matter for speculation. One thing, however, is certain. The court has seen fit to exempt from the regulations of the statute in question and its amendment one of the largest businesses in the state.

In the case of *Schwartz v. Laundry-Linen Supply Drivers Union,*[50] the Supreme Court granted an injunction against a labor union which was seeking to eventually force out of business all the independent laundry jobbers, called "bobtails," in a certain area. The court held that such an attempt was an illegal restraint of trade. This case and certain other cited cases seem to establish limits to the power of labor unions to control business so as to restrain trade by discouraging competition.

In the case of *Alliance Auto Service, Inc. v. Cohen,*[51] the Supreme Court, reversing the lower court,[52] upheld with some reservations, labor's right to engage in secondary picketing. The court ruled that in a controversy with an employer, the employes, or a labor union may picket the retail outlet where the employer's products are sold.

The Supreme Court in handing down its first decision on the question of secondary picketing stated:

> "Indeed, to the extent to which they (the pickets) merely publicize, by true and fair statement, the facts of a labor dispute, they are within the protection given to freedom of speech by Article 1,

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[49] 340 Pa. 382, 17 A. (2d) 206 (1941).
[50] 339 Pa. 353, 14 A. (2d) 438 (1940).
[51] —— Pa. ——, opinion handed down March 24, 1941.
[52] 35 Pa. D. & C. 373 (1939).

> Section 7, of the State's Constitution, and the 14th Amendment to the Federal Constitution . . .
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> "It is, however, a far cry from such a right to that of advertising that a retailer himself is 'unfair' to labor, or urging the public not to purchase *other* merchandise from him or attempting to quarantine him in the general pursuit of his business."

In the refusing to enjoin this secondary picketing which in reality amounts to a secondary boycott, the Supreme Court in its concluding sentence sets down this qualification, ". . . . . notwithstanding the act, an injunction might be granted against a 'true' secondary boycott."

In reaching this conclusion the Pennsylvania Supreme Court relied heavily on a New York[53] and a federal case.[54]

CONCLUSION

During the last few decades labor has won for itself a freedom of action that was unheard of a century ago. It would be a great tragedy if labor should lose any of its deserved freedom because of ill-advised actions in the present world crisis. Any nation under the threat of an international crisis will not tolerate labor disturbances whether labor is right or wrong in any given dispute. Ominous signs[55] have begun to appear that the governments of the several states and the United States and the people as a whole are becoming aroused at labor's strikes and problems.

A bill has been introduced into the state legislature[56] to further limit the broad restrictions against labor injunctions in Pennsylvania. However, a far greater threat to labor organizations and activities has arisen in the form of a suggestion that labor strikes and picketing in defense industries be prohibited. This or similar "war-time" measures would at least temporarily destroy many of the progressive steps toward a greater freedom of action for labor, and its organizations.

Let us hope that labor and the leaders of labor will not take advantage of the present crisis for their own ends and thus endanger the fruits of an ever-increasing liberal trend in favor of the laboring man, his organizations and collective activities.

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[53]Coldfinger v. Feintuck, 276 N. Y. 281, 11 N. E. (2d) 910 (1937).

[54]American Federation of Labor v. Swing, —— U. S. ——, 61 Sup. Ct. 568 (1941).

[55]Column by John M. Cummings published April 7, 1941; column by Gen. Hugh S. Johnson published April 8, 1941. On the other side see the reply of the leaders of the present administration denouncing anti-strike bills: Paul McNutt, Federal Security Administration, in his speech before the National Democratic Club in New York on April 19, and Secretary of War Henry L. Stimson's letter to the Senate Labor Committee disclosed on April 21. Two anti-strike bills, introduced by Senator Joseph H. Ball (R., Minn.), and Representative Carl Vinson (D., Ga.), are at present before Congress.

[56]House Bill No. 136; Senate Bill No. 407.