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Mass Picketing Law in Pennsylvania

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MASS PICKETING LAW IN PENNSYLVANIA

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PICKETING by a union is a very effective economic weapon. The picketing may be peaceful or violent and, it may be carried on by employees or by strangers. The picketing may consist of one or two pickets or of many "mass" pickets. We are concerned here with the problem of mass picketing. In considering this problem particular attention must be given to the Pennsylvania Labor Anti-Injunction Act of 1937 as qualified by the 1939 amendment,[1] which removed certain restrictions imposed by the 1937 Act.

Before discussing the amendment, consideration should be given to the policy underlying the 1937 Act. Patterned after the Federal Anti-Injunction (Norris-La Guardia) Act,[2] the stated public policy of the 1937 Act is that it is necessary for the individual, unorganized worker to have full freedom of self-organization and the right to designate representatives of his own choosing to negotiate the terms and conditions of his employment without interference, restraint, or coercion by employers or their agents in the exercise of these rights. The declaration of policy pointed out that equity procedure, which permitted a complaining party to obtain sweeping injunctive relief, without notice and hearing, based upon written affidavits alone and not wholly or in part upon examination, confrontation and cross-examination of witnesses in open court, was peculiarly subject to abuse in labor litigation.

The Labor Anti-Injunction Act of 1937 is still in force today, but a 1939 amendment rendered the restrictions on the granting of injunctions under that act inoperative in certain cases. Further, the equitable powers of the courts of common pleas in such cases were restored as originally exercised by such courts under the Act of 1836.[3] Among other situations, there was specifically excluded from the scope of the 1937 Act, by virtue of a 1939 amendment, any case,

> Where in the course of a labor dispute as herein defined,[4] an employe, or employes acting in concert, or a labor organization, or the members, officers,

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[1] PA. STAT. ANN. tit. 43, §§ 206a-206r (1937). The policy behind this act is stated in Section 206b. For 1939 amendment see PA. STAT. ANN. tit. 43, § 206d (1939).

[2] 47 Stat. 70, 29 U.S.C. § 101 *et seq.* (1932).

[3] PA. STAT. ANN. tit. 17, §§ 251, 281 (1836).

[4] Section 206c defines the term "labor dispute" to include "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 employer and employe, 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."

> agents, or representatives of a labor organization or anyone acting for such organization, seize, hold, damage, or destroy the plant, equipment, machinery, or other property of the employer with the intention of compelling the employer to accede to any demands, conditions, or terms of employment or for collective bargaining.[5]

As stated in the case of *Fountain Hill Mills v. Amalgamated Clothing Workers' Union,*[6] "if a particular labor dispute falls within the exclusion of section 206(d), [*supra*], compliance with the procedural requirements of pleading and proof of that statute is not a prerequisite to the issuance of an injunction. . . ." [7]

The basic reason for this exception to the applicability of the act is an overriding public policy of protection and safety for all individuals. Where there is a serious threat of force or violence, the interest of the state in protecting life and property of the employees and employers is paramount to the possible harm that might come to the union or laborers through quick action without all the usual safeguards. Under these circumstances the state is willing to permit the granting of a preliminary injunction by equity courts in accordance with the Act of 1836. Regarding this policy, in *Carnegie-Illinois Steel Corp. v. United Steelworkers,*[8] the court said:

> When any individual or organization under whatsoever name attempts to use force to gain his or its ends they are attempting to usurp governmental functions. This attempt unless promptly and effectively restrained by legally constituted authority leads to lawlessness, disorder and anarchy, which is the very negation of all government. The law cannot temporize with lawlessness. *The first duty of government is to govern,* that is to maintain law and order at all hazards and regardless of expense; only by doing this does it fulfill its legitimate function, which is the protection of life, liberty and property.[9]

It has been held that this amendment, as well as the Labor Anti-Injunction Act itself, is a procedural statute within the enacting power of the Pennsylvania legislature,[10] and that neither violates the due process clause of the federal constitution.[11]

Justice Bell, in *Wortex Mills, Inc. v. Textile Workers Union,*[12] reiterated the state courts' right to issue injunctive relief. This sovereign power can only

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[5] *Supra,* note 2.
[6] 393 Pa. 385, 143 A.2d 354 (1958).
[7] *Id.* at 390, 391, 143 A.2d at 357, 358.
[8] 353 Pa. 420, 45 A.2d 857 (1946).
[9] *Id.* at 429, 45 A.2d at 861.
[10] Casass v. Monaghan, 65 F. Supp. 658 (W. D. Pa. 1946).
[11] Casass v. Monaghan, 65 F. Supp. 658 (D. D. Pa. 1946); Palmerine v. Dravo Corp., 65 F. Supp. 662 (W.D. Pa. 1946).
[12] 369 Pa. 359, 85 A.2d 851 (1952).

be limited where it is restricted by the federal or state constitution, or where it it clearly manifested by Congress to exclude states from exerting this police power. According to prior judicial pronouncement, the controlling question is whether the picketing which is sought to be prohibited is for an unlawful purpose. If the picketing is for an unlawful purpose the general equity jurisdiction of the court is unrestricted, and an injunction restraining such picketing is not an infringement of the constitutional guaranty of free speech. It necessarily follows that picketing is legal and within the protection of the Constitution if it is peaceful, orderly and for a legitimate or lawful purpose.

> However, a State is not required to tolerate in all places and in all circumstances even peaceful picketing by an individual; it is well established that the method or conduct or purpose or objective of the picketing may make even peaceful picketing illegal.[13]

In *General Building Contractors' Ass'n v. Local 542*[14] the Pennsylvania Supreme Court held that federal assertion of power over labor disputes and employee-employer relations under the Labor-Management Relations Act[15] and the Norris-La Guardia Act[16] did not deprive state courts of equity from exercising their traditional power to require performance of contractual duties and, by injunctive relief, to prevent irreparable damage which would be brought about by the failure to perform such duties. The opinion stated:

> There does not exist any repugnance or conflict direct or indirect, between the exercise of jurisdiction by a court of equity as in the instant case and the Labor Management Relations Act and the Norris-La-Guardia Act. There are no statutes which would curtail the exercise of jurisdiction by the Court in the circumstances here presented. Prevention of violation of obligations contained in a contract by injunctive relief is a power traditionally exercised by courts of this Commonwealth. Congress has not acted upon the specific subject matter at issue. Enforcement of contracts may be required according to the usual processes of the law.[17]

In *Allen-Bradley Local 1111, United Elec. v. Wisconsin Employment Relations Bd.*,[18] under the Wisconsin Employment Peace Act the Wisconsin Employment Relations Board, in a dispute between the employer and a labor union, ordered the union, its officers, agents and members to cease and desist from mass picketing of the employer's factory, threatening personal injury or property damage to employees desiring to work, obstructing entrance to and egress from

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[13] *Id.* at 369, 85 A.2d at 857.
[14] 370 Pa. 73, 87 A. 2d 250 (1952).
[15] 61 Stat. 136, 29 U.S.C. §§ 141 *et seq.* (1947).
[16] 47 Stat. 70, 29 U.S.C. §§ 101 *et seq.* (1932).
[17] 370 Pa. at 82, 87 A.2d at 255 (1952).
[18] 315 U.S. 740 (1942).

the employer's factory, and picketing the homes of the employees. The sole question presented was whether the said order was unconstitutional and void as being repugnant to the provisions of the National Labor Relations Act.

The United States Supreme Court held that the order was not unconstitutional as conflicting with the National Labor Relations Act, and that an intention of Congress to exclude states from exercising their police powers must be clearly manifested. The opinion written by Mr. Justice Douglas stated, inter alia:

> In sum, we cannot say that the mere enactment of the National Labor Relations Act, without more, excluded state regulation of the type which Wisconsin has exercised in this case. It has not been shown that any employee was deprived of rights protected or granted by the Federal Act or that the status of any of them under the Federal Act was impaired. Indeed, if the portions of the state Act here invoked are invalid because they conflict with the Federal Act, then so long as the Federal Act is on the books it is difficult to see how any state could under any circumstances regulate picketing or disorder growing out of labor disputes of companies whose business affects interstate commerce.[19]

Not only the Supreme Court of the United States, but appellate courts of other jurisdictions have upheld the undisputed right and clear authority of the state courts to invoke their police power in appropriate cases.[20]

In the leading case of *Garner v. Teamsters Union, Local 776*,[21] which dealt with the question of pre-emption, the United States Supreme Court held that where a course of conduct constituted an unfair labor practice under both federal and state statutes, the practice was within the jurisdiction of the National Labor Relations Board, and was not subject to the equitable powers of the state. The Court found that Congress, in passing the Labor Management Relations Act, had pre-empted the field to the extent of the statute's coverage. However, the Court did not preclude all state action in the field of labor relations, and subsequent cases have defined more concretely the area of state competence.

After the *Garner* case, the first case that involved this issue was *United Constr. Workers v. Laburnum Constr. Corp.*[22] The petitioner in that case had demanded that the respondent recognize it as the sole bargaining agent for respondent's employees on a particular construction project. Upon respondent's refusal, the petitioner's agents threatened and intimidated respondent's office

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[19] *Id.* at 751.

[20] See: International Union, U.A.W., A.F.L., Local 232 v. Wisconsin Employment Relations Bd., 336 U.S. 245 (1949); Erwin Mills, Inc. v. Textile Workers Union, 234 N.C. 321, 67 S.E. 2d 372, (1951); Royal Cotton Mill Co. v. Textile Workers Union, 234 N.C. 545, 67 S.E. 2d 755, (1951); Molders Union v. Texas Foundaries, Inc., 241 S.W. 2d 213, (Tex. Ct. Civ. App. 9th Dist., 1951); Goodwins Inc. v. Haggdorn, 303 N.Y. 300, 101 N.E. 2d 697, (Ct. App., 1951); Southern Bus Lines v. Street Railway Employees, 205 Miss. 354, 38 So. 2d 765, (1949); Robinson Freight Lines v. Teamsters Union, 28 L.R.R.M. 2453 (Tenn. Ct. App. 1951).

[21] 373 Pa. 19, 94 A.2d 893 (1953) *aff'd* 346 U.S. 485 (1953).

[22] 347 U.S. 656 (1954).

with violence to such a degree that the respondent was forced to abandon the construction project. The evidence indicated that a boisterous crowd of forty to one hundred fifty men congregated at the project and that some of the men used abusive language, that some were drunk, and that some carried guns and knives. The damages recovered were for the resultant loss of profits on the project. In this case the United States Supreme Court affirmed the state court decree awarding an employer damages arising from tortious conduct under state law, although it also constituted an unfair labor practice under section 8(b) (1) (A) of the Labor Management Relations Act.[23]

The question was again presented in *United Automobile Workers v. Wisconsin Employment Relations Bd.*[24] Here the dispute arose out of the failure of appellant and the Kohler Company to reach an agreement on a new collective bargaining contract. In a complaint to the Wisconsin Labor Board, Kohler alleged that the appellant's members had engaged in mass picketing which obstructed access to Kohler's plant, prevented persons desiring to be employed therein from entering the plant, coerced employees who desired to work, and threatened the employees and their families with physical injury. The Wisconsin Board issued an order directing the union and certain of its members to cease all such activities.

The Court noted that the union's conduct was a violation of section 8(b) (1) of the Labor Management Relations Act,[25] and that, consequently, the National Labor Relations Board could have issued an order similar to that issued by the Wisconsin Board. However, the Court found that this did not preclude the state from acting. In support of the state authority the Court said:

> As a general matter we have held that a State may not, in the furtherance of its public policy, enjoin conduct "which has been made an 'unfair labor practice' under the Federal statutes . . . ." But our post-Taft-Hartley opinions have made it clear that this general rule does not take from the States power to prevent mass picketing, violence, and overt threats of violence. The dominant interest of the State in preventing violence and property damage cannot be questioned. It is a matter of genuine local concern. Nor should the fact that a union commits a federal unfair labor practice while engaging in violent conduct prevent States from taking steps to stop the violence.[26]

There are certain limits to the state action. For example, in *Youngdahl v. Rainfair, Inc.*[27] respondent's premises were picketed by several of its employees, numbering from eight to thirty-seven. Although none of the employees were

[23] Labor Management Relations Act, c534 § 1(*b*), 65 Stat. 601, 29 U.S.C. 158 (1951).
[24] 351 U.S. 266 (1956).
[25] *Supra*, note 23.
[26] 351 U.S. at 274 (1956).
[27] 355 U.S. 131 (1957).

members of a labor union, many had signed applications to join Amalgamated Clothing Workers of America, CIO. The apparent purpose of the picketing was to compel respondent to recognize the union as the bargaining agent for its employees. While the picketing was accompanied by abusive remarks and some acts of violence, there was no evidence that the picketing precluded access to respondent's premises. The state court entered a decree enjoining not only the threatening and intimidation of the employees but also all picketing of respondent's premises. The United States Supreme Court affirmed the order only insofar as it restrained the intimidating acts, and reversed the order restraining all future picketing. In this respect the Court said:

> Though the state court was within its discretionary power in enjoining future acts of violence, intimidation and threats of violence by the strikers and the union, yet it is equally clear that such court entered the pre-empted domain of the National Labor Relations Board insofar as it enjoined peaceful picketing by petitioners.[28]

In two related, but separately appealed cases, illustrative of the limits on state action, the Supreme Court in one case reversed a decree of a California court enjoining picketing [29] and in another reversed a later decision of the California court granting damages allegedly arising from the picketing.[30] In the latter case the picketing arose from the failure of respondent Garmon to yield to a union request that respondents retain in their employ only those workers who were members of the union or who applied for membership within thirty days. The record indicated that the picketing was peaceful. The Court held that the state was precluded from awarding damages since the dispute fell within the jurisdiction of the National Labor Relations Board. In the former case the Court reversed the injunction holding that the dispute was within the exclusive jurisdiction of the National Labor Relations Board. In reconciling its decision with its earlier cases, the Court stated:

> It is true that we have allowed the States to grant compensation for the consequences, as defined by the traditional law of torts, of conduct marked by violence and imminent threat to the public order . . . . We have also allowed the States to enjoin such conduct . . . . State jurisdiction has prevailed in these situations because the compelling state interest, in the scheme of our federalism, in the maintenance of domestic peace is not overridden in the absence of clearly expressed congressional direction . . . . In the present case there is no such compelling state interest.[31]

It should be noted that in neither case did the state acquire jurisdiction through the failure of the National Labor Relations Board to adjudicate the

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[28] *Id.* at 139.
[29] San Diego Building Trades Council v. Garmon, 353 U.S. 26 (1957).
[30] San Diego Building Trades Council v. Garmon, 359 U.S. 236 (1959).
[31] *Id.* at ——; 3 L.ed 2d 775, 784 (1959).

controversy. The Labor-Management Disclosure and Reporting Act of 1959,[32] which was enacted subsequent to this case, expressly provides that jurisdiction in state courts and agencies shall not be excluded in any case in which jurisdiction is declined by the National Labor Relations Board. It is clear from the history of this enactment and the reports of the respective labor committees of the House and Senate dealing with this statute that the provision is designed to meet the problem arising in cases of duality of coverage (viz: coverage by state and federal law), but in which remedy was not admissible in either forum; first, because state relief was barred by federal coverage; and, second, because federal relief was unavailable by reason of administrative declination of jurisdiction by the National Labor Relations Board.[33] Henceforth, state relief, whether by injunction or damage suit in the courts, or by action before appropriate administrative agencies, will be permissible in all cases where the National Labor Relations Board refuses to take jurisdiction under its jurisdictional "yardstick".

The problem of federal pre-emption has been considered in several Pennsylvania cases. The Supreme Court of Pennsylvania has recognized that the state is not precluded from exercising its police power in the field of industrial relations.[34] In *Fountain Hill Mills v. Amalgamated Clothing Workers' Union,*[35] the argument that the filing of a petition with the National Labor Relations Board ousted the state equity court of jurisdiction was rejected. The court held:

> [E]ven if we assume that the National Labor Relations Board does have jurisdiction over the controversy in question, this does not *per se* deny state action in all cases. . . . In *Allen-Bradley* [case] it was held that the National Labor Relations Act did not prevent the State from enjoining mass picketing, threats or personal injury to employes desiring to work, or the obstruction of ingress to and egress from the employer's factory.[36]

Finally, in *Taylor Fibre Co. v. Textile Workers Union,*[37] the most recent judicial pronouncement on this subject, the postion taken in the *Wortex Mills* [38] and *Fountain Hill Mills* [39] cases was reaffirmed. The fact that a labor dispute is subject to federal law does not alone make the federal jurisdiction exclusive. A state court of equity may still issue an injunction to prohibit mass picketing. Under these cases it is clear that the Pennsylvania state courts of equity are not precluded from enjoining mass picketing by the doctrine of pre-emption.

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[32] 73 Stat. 519 (1959).
[33] See: Guss v. Utah Labor Relations Bd., 353 U.S. 1 (1957).
[34] See: Garner v. Teamsters Union, Local 776, 373 Pa. 19, 94 A.2d 893 (1953), *aff'd,* 346 U.S. 485 (1953).
[35] 393 Pa. 385, 143 A.2d 354 (1958).
[36] *Id.* at 394, 395, 143 A.2d at 359.
[37] 395 Pa. 535, 151 A.2d 79 (1959).
[38] Wortex Mills, Inc. v. Textile Workers Union (CIO), 369 Pa. 259, 85 A.2d 851 (1952).
[39] Fountain Hill Mills v. Amalgamated Clothing Worker's Union, 393 Pa. 385, 143 A.2d 354 (1958).

Under what circumstances has section 206(d) of the Pennsylvania act been enforced by the granting of a preliminary injunction on the filing of a bill supported by injunction affidavits? In the *Carnegie-Illinois Steel* case [40] the Supreme Court of Pennsylvania, speaking through Chief Justice Maxey, said:

> [W]hen hundreds of pickets are massed, as at least two hundred were here at a single gate, it is obvious that this force was not mustered for a peaceful purpose. When, as here, this force denied to the supervisors and to other maintenance personnel access to plaintiff's plant, when such personnel were "grabbed by pickets" and "forcibly detained", when other pickets threatened "bloodshed if management did not stop making use of the 48 "Mill Gate", when the superintendent of one of mills is "stopped by seven or eight pickets", forcibly placed in an automobile and held under restraint for one hour and told that some other employees "had been beaten up and he was lucky that he was not" and that "they could throw him over the river bank", when superintendents and other executives of the plaintiff's corporation are halted by "pickets massed in a solid group" and told that they cannot get into the plaintiff's plant "if they do not have a Union Pass", and when such and similar acts of lawlessness are certified to in more than a dozen affidavits of apparently responsible persons, it is time for the agencies of government to act and to re-establish law and order. . . . The injunction issued in this case impinged on no one except persons acting unlawfully or planning to act unlawfully.[41]

Similarly, in *Westinghouse Elec. Corp. v. United Elec., Radio & Mach. Workers of America (CIO), Local 601* [42] the Pennsylvania Supreme Court held that mass picketing immediately outside entrances, accompanied by intimidation and threatened violence, for the purpose of implementing an expressly declared intent or policy to prevent ingress to and egress from the employer's property constitutes a seizure and holding of it, within the meaning of this exclusionary clause. The court suggested,

> [E]ven if it were technically to be held that the force which accomplishes the seizure must be applied on the very premises of the employer, that technicality is satisfied when the pickets operate from positions in front of the gates, because ordinarily the title to property abutting on a public highway extends to the center of the highway, the sidewalk being for all intents and purposes a part of the owner's premises subject only to the public's easement of passage. . . .[43]

Reasonable grounds for granting a decree to preliminarily restrain mass picketing were present in the case of *Yale Knitting Mills, Inc. v. Knitgoods Workers Union,*[44] where the court found that,

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[40] 353 Pa. 420, 45 A.2d 857 (1946).
[41] *Id.* at 431, 45 A.2d at 862.
[42] 353 Pa. 446, 46 A.2d 16 (1946).
[43] *Id.* at 455, 46 A.2d at 20.
[44] 334 Pa. 23, 5 A.2d 323 (1939).

> [B]etween thirty-five and forty pickets, with signs on their hats and carrying banners, falsely stating the existence of a "strike", surrounded the factory of plaintiff company; in the course of the picketing, violence was resorted to; the plaintiff's employees were accosted, insulted, reviled and intimidated; a number were set upon and beaten; their clothing was torn, and on one occasion a police guard was required to enable plaintiff's employees to enter the factory. The pickets, by threats of violence and other expressions tending to intimidate, prevented automobile trucks transporting merchandise consigned to plaintiff, from making deliveries thereof, and from removing manufactured goods from the plant.[45]

The reasons which motivated the employer to seek an injunction were held irrelevant to a determination of the legality of the picketing in the case of *Westinghouse Electric Corp. v. United Electrical Workers.*[46] The court in that case stated:

> That court should have been concerned exclusively with the legal question of whether mass picketing, unaccompanied by violence, threats and intimidation, is illegal. Where such action is adjudged illegal, the good or bad motive of an employer in insisting upon the enforcement of the legal principle is immaterial. . . .[47]

In conclusion we have seen that the Pennsylvania courts consistently hold mass picketing under the above-illustrated circumstances to be illegal, since it is accompanied by coercion, intimidation or threats. Where such circumstances exist picketing is not peaceful and an injunction will be issued to enjoin unlawful picketing. Further, the court may enjoin picketing conducted in an unlawful manner or for an unlawful purpose on the mere filing of a bill supported by affidavits alleging these facts.[48] The injunction will be issued even though petitioner's supervisory personnel do not appear to make a sincere effort to cross the picket lines.[49]

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[45] *Id.* at 25, 5 A.2d at 324, 325.
[46] 383 Pa. 297, 118 A.2d 180 (1955).
[47] *Id.* at 302, 118 A.2d at 182.
[48] Wortex Mills, Inc. v. Textile Workers Union (CIO), 369 Pa. 259, 85 A.2d 851 (1952); Westinghouse Electric Corp. v. United Electrical Workers, 383 Pa. 297, 118 A.2d 180 (1955); West Penn Twp. School Dist. v. Int'l Bd. of Electrical Workers, 396 Pa. 408, —— A.2d —— (1958).
[49] Westinghouse Electric Corp. v. United Electrical Workers, 383 Pa. 297, 118 A.2d 180 (1955).