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Selected Cases on Picketing 1937 to 1953 : An Inquiry Into the Developing Law on Picketing

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SELECTED CASES ON PICKETING 1937 TO 1953

AN INQUIRY INTO THE DEVELOPING LAW ON PICKETING

by

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LIFE

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CHAPTER I

PICKETING IN GENERAL

In the field of labor relations picketing is a traditional technique. When the average citizen thinks of picketing, he thinks of a labor dispute, so closely have the two been identified in the public mind. In recent years, picketing has come to be regarded as a method of communication; hence it has been accorded--as long as it is peaceful--the protection of the First Amendment of the Constitution.[1] Recent decisions of the Supreme Court have, however, pointed out that picketing is more than just communication.[2] Thus a state may prohibit picketing where its objective is contrary to legitimate public policy or state law.

Picketing is an instrument, used by labor, in industrial disputes. It is generally a physical manifestation. The ultimate purpose of picketing is to bring an employer to terms; the immediate purposes vary with the situation. For example, the purpose may be to keep employees from going to work, to maintain the morale and solidarity of the strikers, to advise the community that the

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1 Thornhill v. Alabama, 310 U.S. 88 (1940); 6 LRRM 697; Carlson V. California, 310 U.S. 106 (1940); AFL v. Swing, 312 U.S. 321 (1941); 7 LRRM 307.

2 International Brotherhood of Teamsters v. Hanke, (1950); 339 U.S. 470; Building Service Employees International Union v. Gazzam, (1950) 339 U.S. 532; Hughes v. Superior Court of Contra Costa City California, (1950) 339 U.S. 460; 26 LRRM 2072.

employer is unfair or to keep employees of others from picking up or delivering goods at the premises of the primary employer.[3] Not only are the unions interested in communicating information to other workers, customers and the general public, but they desire also to develop sympathy for their cause. They are naturally anxious to swing public opinion to their side, for, if this can be done, they are much more likely to secceed with their objective. Any or all of the above mentioned objectives may be present. Moreover the listing is not complete.

Picketing usually but not always, accompanies a strike.[4] Early experience with the strike demonstrated to labor that the strike was not very effective against an employer if all labor did was to stop work and walk off the job. The employer could go into the labor market and replace his striking employees with other workers. The workers saw that if they were to make the strike effective, they must prevent other workers from taking their jobs. Hence they began the practice of stationing themselves about the employer's place of business and thereby attempting to prevent other workers from entering and taking over their jobs.

Picketing does not always follow the same pattern. Sometimes it

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3 The employer who controls the employees involved.

4 There have been cases where picketing existed without an accompanying strike. In Lauf v. E. G. Shinner Company (1938) 303 U.S. 323, the defendant (union) picketed the place of business of the complainant. The complainant's employees did not belong to the union, nor did they want to belong. Yet, the court refused to enjoin the union and held that a "labor dispute," as this term is defined in Sec. 13 (c) of the Federal Anti-Injunction (Norris-La Guardia) Act, existed. See also New Negro Alliance v. Sanitary Grocery Company, (1938) 303 U.S. 552; American Federation of Labor v. Swing, (1941) 312 U.S. 321.

takes the form of peaceful persuasion and all the pickets attempt to do is to communicate information to the public and to so-called strike-breakers or "scabs." Sometimes the "information" communicated is true and sometimes it is false. At times pressure is brought upon customers of the employer by various methods and devices, including threats of physical violence and abusive epithets and profanity. At times picketing is accompanied by violence and destruction of property.

At the present time, courts generally agree that peaceful picketing for lawful objects is legal.[5] There has not always been such general agreement. Some years ago, some courts took the position that there was no such thing as "peaceful picketing." For example, the Circuit Court for the Southern District of Iowa expressed itself on this matter in the following words: "There is and can be no such thing as peaceful picketing any more than there can be chaste vulgarity, or peaceful mobbing, or lawful lynching."[6] In another case of more recent origin, the court said, "The term "peaceful picketing" is self-contradiction and aptly describes nothing that is known to man."[7] Some of the earlier decisions of the courts of Illinois, Michigan, New Jersey, Oregon, Pennsylvania and Washington condemned all picketing. Alabama, Colorado and Washington enacted statutes that made picketing a misdemeanor, and many cities had

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5 Michaels v. Hillman, (S. Ct. Monroe City, 1920) 111 Misc. 284, 181 N. Y. S. 165; F. C. Church Shoe Company v. Turner, (1926) 218 Mo. App. 516, 279 S.W. 232; American Steel Foundries v. Tri-City Central Trades Council, (1921) 257 U.S. 184.

6 Atchison, Topeka and Santa Fe Railroad Company v. Gee, (1905) 139 Fed. 584. See also: Thomas v. City of Indianapolis, 195 Ind. 440; 145 N. E. 550 (1924).

7 Cooper Company v. Los Angeles Building Trades Council California (1941) Sup. Ct. 7 LRRM 706.

ordinances to the same effect. Pickets, said the New York Supreme Court, hovering around a place constitute an intimidation especially to women customers.[8]

Although peaceful picketing or "persuasion" now may be said to be legal, it must conform to this yardstick: picketing is lawful when the means or methods used are lawful and when the object is lawful. It is unlawful when the means used or the objects are unlawful.

This paper will concern itself with the problem of legality as decided by the courts and the National Labor Relations Board. The problem raises these questions: (1) For what reasons, under what circumstances, and for what objects can a union legally picket? (2) When will an employer be granted injunctive relief against picketing?

The writer believes that the trend of recent decisions of the courts shows a definite, consistent narrowing of the boundaries that limit the scope of picketing. It is also believed that a continuing of this limiting policy may ultimately result in making non-effective this particular labor technique.

It is not difficult, even for the layman, to understand why violent Picketing and mass picketing have been declared illegal. The more confusing and perplexing problems arising for present day consideration are to be found in cases concerning peaceful picketing. Are the means used and the objectives sought legal? Is it a secondary boycott? When is it an unfair labor practice under the NLRA as amended? Does it conform with the reasonable public policy of a state as expressed in its court decisions and statutory law?

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8 Yablonowitz v. Korn 205 App. Div. 440; 199 N.Y.S. 769 (1923).

CHAPTER II

PICKETING AND FREE SPEECH

It has been suggested that picketing is generally considered to be a physical manifestation, but there is no doubt that it may and often does, have physical aspects such as threats of physical violence, sneers, epithets and profanity. The actions of the pickets may involve not only walking up and down, but also carrying placards, issuing throwaways, and loud speaker messages addressed to the public and fellow-unionists.

In other words, picketing can become many things at once: first and foremost are the constitutionally protected concepts of free speech, press and assembly which are found in the First Amendment and which are protected against undue abridgement by the Fifth and Fourteenth Amendment. They are typified by speech *per se*, the use of placards and the actual assembly. Second may be found all items other than the above, some of which were mentioned in the preceding paragraph. Mr. Justice Black has observed, "picketing may include conduct other than speech, conduct which can be made the subject of restrictive legislation."[1] It is not picketing *per se* that is restrictable by the government, but rather the second element.

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1 *Giboney v. Empire Storage and Ice Company* 336 U.S. 490 (1940) 23 LRRM 2505

Picketing may ordinarily be of two main types, violent and non-violent, with two over-all objectives legal and illegal.

Cases involving picketing ordinarily pose the problem of one individual's rights against another's, or one group's against another's with the state refereeing the dispute for either the individual's (constitutional) benefit or perhaps the community's. The fundamental free speech rights of the individual are examined from the standpoint of the community's betterment in a political, social and economic framework.

The free-speech-picketing identification began with the 1937 Brandeis dictum that union members might "make known the facts of a labor dispute, for freedom of speech is guaranteed by the Federal Constitution."[2]

Three years later, Mr. Justice Murphy adopted this view on a seemingly wholesale scale.[3]

A constitutional right now covered peaceful picketing against federal or state interference, control or restriction whether it was legislative or judicial in origin. But a careful qualification was placed on this right to picket. All picketing could not be banned but it could be regulated. "The State may, in the exercise of its police power, regulate the methods and means of publicity as well as the use of the public streets."[4]

The following leading cases are authority for much of the legal

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2 Senn v. Tile Layers Protective Union 301 U.S. 468.

3 Thornhill v. Alabama 310 U.S. 88.

4 Senn v. Tile Layers Protective Union, supra.

thought on picketing at the present time.[4a]

On May 24, 1937, in Senn v. Tile Layers,[2] the United States Supreme Court held that a labor organization had the right, under the Wisconsin Labor Code, to engage in peaceful picketing, even to the extent of calling to the attention of the public the activities of a non-union employer. Senn conducted a small tile business, employing one or two journeymen tile layers and several helpers, and performed much of the work himself. At the time of the court action neither Senn nor his employees were members of the union and had no contractual relations with it. In fact, Senn could not become a member of the tile layers union, because the constitution and rules of the union provided that a journeyman tile setter must have acquired his experience through at least three years of apprenticeship. On account of the condition of the industry and its peculiar composition, the union considered it necessary to require all employers agreeing to conduct a union shop to assent that no owner of a tile-contracting business "shall work with the tools or act as a helper." Senn was induced to become a union contractor. He expressed a willingness to enter into the agreement provided the stipulation relative to working employers was eliminated. The union countered that this was impossible, since the inclusion of the provision was necessary in maintaining wage standards and further that it would be an act of discrimination against other contractors who had signed the agreement.

The lower court denied an injunction to Senn. On the findings made,

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4a It should be noted that the National Labor Relations Act as amended and many state labor relations acts have drawn a tighter interpretation around the application of the principles upon which the "free speech" concepts are founded. This will be discussed further under picketing as an unfair labor practice.

the court declared that the controversy was a labor dispute, that the picketing was lawful, and that it was not unlawful for the union to advise, etc., without fraud, anyone of the existence of the labor dispute. Later appeals to the supreme court of the State affirmed the judgment of the trial court. The United States Supreme Court then consented to hear the case. The main question for determination was whether the Wisconsin act, as applied to the facts, constituted a denial of liberty to Senn or deprived him of his property or denied him equal protection of the laws in violation of the fourteenth amendment. Senn contended that the right to work in his business with his own hands was right guaranteed by the Federal Constitution, and that a State may not permit actions that tend "to induce him to refrain from exercising it."

The union conceded that as long as Senn conducted a non-union shop he had the right to work with his hands and tools. But, on the other hand, the union contended that "since Senn's exercise of the right to do so is harmful to the interests of its members, they may seek by legal means to induce him to agree to unionize his shop and to refrain from exercising his right to work with his own hands.

The question for determination was whether the means employed and the end sought under the Wisconsin act were forbidden by the Constitution of the United States. Mr. Justice Brandeis declared:

> "Clearly the means which the statute authorises--picketing and publicity--are not prohibited by the fourteenth amendment. Members of a union might without special statutory authorization by a State, make known the facts of a labor dispute, for freedom of speech is guaranteed by the Federal Constitution. The State may, in the exercise of its police power, regulate the methods and means of publicity as well as the use of public

> streets. If the end sought by the unions is not forbidden by the Federal Constitution the State may authorize working men to seek to attain it by combining as pickets, just as it permits capitalists and employers to combine in other ways to attain their desired economic ends."

On April 22, 1940, the United States Supreme Court held invalid an Alabama anti-picketing statute and a similar ordinance of Shasta County, California. The decisions were based on the ground that the prohibition of peaceful picketing violated the fourteenth amendment to the Constitution, which guarantees free speech and a free press.

The statute of Alabama prohibited picketing for the purpose of interfering with any lawful business, and outlawed loitering without a just cause or legal excuse. By virtue of this statute a person was convicted and fined $100, which conviction was upheld by the Alabama courts.

In this case[5] the U. S. Supreme Court speaking through Mr. Justice Murphy, held that the State statute abridged the rights of free speech and press. The disclosure of information concerning the facts of a labor dispute, the Court said, "must be regarded as within that area of free discussion that is guaranteed by the Constitution." Again, it declared that "satisfactory hours and wages and working conditions in industry and a bargaining position which makes these possible have an importance which is not less than the interest of those in the business or industry directly concerned."

The Court also held that the statute could not be sustained as an exercise of the State's police power to preserve the peace and to protect the

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5 Thornhill v. Alabama, 310 U.S. 88, (1940) 6 LRRM 697.

privacy, the lives, and the property of its residents. The Court, however, agreed that the State is empowered to preserve the peace, but denied that a breach of peace resulted whenever a person, as in this case, "approaches the premises of an employer and publicizes the facts of a labor dispute involving the latter." The language in the Thornhill case has been understood by many that peaceful picketing could not be controlled by the State.

In the California case[6] Mr. Justice Murphy pointed out that "the sweeping and inexact terms of the ordinance disclose the threat to freedom of speech inherent in its existence."

Now the Senn and Thornhill cases formed an umbrella of constitutional protection over peaceful picketing which remained virtually unchanged until the enactment of the Labor Management Relations (Taft-Hartley) Act. In the Senn case a Wisconsin statute making all peaceful picketing legal was upheld.

In the Thornhill case an Alabama statute banning all picketing was declared "invalid on its face."

In AFL v. Swing the Court expanded the concept of peaceful picketing to include stranger picketing.

In this case[7] the Supreme Court in a six to two decision held that an injunction of the State court was invalid, since, in this instance, the order sought to restrain peaceful picketing merely on the ground that there was no immediate employer-employee dispute. In this case, a union of beauty

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6 Carlson v. People of California, 310 U.S. 106 (1940). 6 LRRM 705.

7 American Federation of Labor v. Swing 312 U.S. 321 (1941). 7 LRRM 307.

shop workers, failing in its attempts to unionize a certain beauty parlor, began picketing the plant. The employer had sought and been granted an injunction against "this interference with his business and with the freedom of the workers not to join a union." The Supreme Court decision held that the "State cannot exclude workingmen from peacefully exercising the right of free communication by drawing the circle of economic competition between employers and employees so small as to contain only an employer and those directly employed by him."

Stranger picketing was again reviewed in the Ritter case. Here the Court ruled a state may forbid non-violent and constitutionally protected picketing in order to localize a dispute. In the 1942 Ritter's Cafe case[8] Texas was permitted to enjoin the picketing of a cafe where the owner was having a building erected at another location, over a mile away, by a contractor who employed non-union men and with whom the union's dispute was concerned. Here the union's objective was contractor employment of union men, not restaurant union employment, and Ritter, the restaurant owner, was distinguished from Ritter, the building owner.

Here was an important indication of what was to come. Limits to peaceful picketing were to be defined and re-defined particularly in the areas where picketing is utilized as a means to induce an employer to recognize the picketing union as exclusive representative of the employer's employees for collective bargaining purposes and picketing to cause the employees of

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8 Carpenters and Joiners Union v. Ritter's Cafe 315 U. S. 722, (1942) 10 LRRM 511.

the picketed employer to join the picketing union.[9]

The writer will further trace the developing law with regard to building construction cases later in this paper when discussing secondary picketing under the NLRA as amended.

However, the Ritter decision was not a deviation from the Thornhill and Swing cases, because geographical limitation was the only bar to legality. Had Ritter been picketed at the construction site only, it is reasonable to assume the court would have held it privileged.

The Supreme Court upheld[10] the right of unions to picket against a system involving the peddling of bakery products. The peddlers bought from baking companies and sold to retailers, keeping for themselves the difference between cost and sales price. A labor union, desiring collective-bargaining agreements for drivers, objected to the system of peddlers, whose number in five years had increased from 50 to about 500. Gradually the union drivers were being discharged by the baking companies unless they acted as peddlers and provided their own trucks. Finally the union tried to force the peddlers to work only six days a week and hire an unemployed union man at $9.00 for the seventh. Failing in this the union resorted to having two pickets walk with placards before certain bakeries selling to the peddlers.

This case, the New York Court of Appeals had ruled, that the controversy was not a labor dispute within the meaning of the State anti-injunction

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9 Building Service Employees v. Gazzam 339 U.S. 533 (1950). 26 LRRM 2075 affirming 24 LRRM 2334

10 Bakery and Pastry Drivers v. Wohl, 315 U.S. 769 (1942) 10 LRRM 507 reversing 7 LRRM 770.

law and therefore might be enjoined. The Supreme Court ruled, however, that picketing is protected by the free-speech guaranty of the Constitution, even though not part of a labor dispute. The Court pointed out, there was no way for the drivers to express themselves otherwise than by the methods they used.

The U. S. Supreme Court in two cases, Cafeteria Employees Union, Local 302 v. Angelos[11] and Cafeteria Employees Union, Local 302 v. Tsakires[12] reaffirmed the basic principle held by labor unions that peaceful picketing is an exercise of freedom of speech guaranteed by the Federal Constitution.

In the first case, a cafeteria was picketed for the purpose of union organization, although the business was carried on at the time by the owners themselves. The picket signs declared the business "unfair" and gave the impression that the unfairness was directed toward organized labor and that the pickets had been employed in the cafeteria. The pickets also told customers entering the establishment that they would be served bad food and that by "patronizing it" they were "aiding the cause of Fascism." The State court found that these representations were false and therefore subject to judicial restraint.

In the second case the State court found that customers entering a cafeteria were told that a strike was in progress and were insulted. In both cases the New York Court of Appeals held that there was no "labor dispute" as defined in the State Anti-Injunction Act (New York Civil Practice Act, sec. 876-a).

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11 Cafeteria Employees Union v. Angelos, U.S. Sup. Ct. (1943) 13 LRRM 633; 320 U.S. 293.

12 Ibid.

Without adverting to the basis of the State court decisions, namely, the absence of an employer-employee relationship, and in reversing those decisions, the United States Supreme Court held that the actions complained of were protected by section 1 of the fourteenth amendment. The Court relied on its previous decision in AFL v. Swing,[13] in which it was said that a State cannot so limit the right of employees to publicize a dispute "by drawing the circle of economic competition between employer and employees so small as to contain only an employer and those directly employed by him."

Now, with but one exception, that in the Ritter case, peaceful picketing seemed to be solidly established as a form of free speech. However, the NLRA as amended by the Labor Management Relations Act of 1947 expressly outlaws secondary picketing. Thus, the doctrine of free speech seemed to stand in opposition to federal statute.

The resolving of this question came when the Supreme Court took jurisdiction over several cases which raised the question as to whether or not peaceful picketing could be constitutionally enjoined by state courts where the object to be gained by such picketing is contrary to the public policy of the state.[14]

The first case in which the Supreme Court grappled with the problem was Giboney v. Empire Storage and Ice Company, decided in 1949.[15]

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13 See footnote 7 on page 10.

14 For example Section 7 as amended gives to employees the right to refrain from engaging in labor activities. Section 8 (a) (1) (as to the employer) and Section 8 (b) (1) (as to the union) make it unlawful to "restrain or coerce" employees in the exercise of their rights as guaranteed in Section 7.

15 336 U.S. 490 (1949).

Ice peddlers purchased from suppliers and resold to consumers; the peddlers sought to unionize everyone, and obtained supplier agreements to sell only to its members. Empire refused to sign, contending it was a violation of Missouri's anti-trust laws, and the union picketed, the purpose being to compel Empire to agree to stop selling to non-union peddlers. The Supreme Court upheld Empire's claim and refused to treat the picketing in isolation since the record disclosed "The sole immediate object. . . was to compel Empire" to violate a valid state law; the court declared that "the injunction did no more than enjoin an offense against Missouri law, a felong;" and that freedom of speech cannot be "used as an integral part of conduct in violation of a valid criminal statute."

The Giboney case thus made it possible to avoid the effects of Thornhill v. Alabama by making labor objectives illegal under carefully drafted statutes. Furthermore the Court dictum had altered. Peaceful picketing was now "more than free speech."

In Building Service Employees v. Gazzam, the employees of a hotel had, in a free and fair election, voted not to join the union. The union thereupon picketed the employer to induce him to force his employees to join the union. No criminal statute of the State of Washington was involved. However, coercing an employer into choosing a bargaining representative for his employees was forbidden by a Washington Labor Disputes Act. The Court held[16] that the state court could constitutionally enjoin picketing designed to induce an employer to coerce his employees into joining the picketing union since it would violate the statutorily declared public policy of the state.

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16 Building Service Employees Union v. Gazzam, 339 U.S. 532 (1950).

In both the Giboney and Gazsam cases the object prohibited was set out in state legislation. In the following case[17] no legislation at all was involved.

Hanke and his three sons were co-partners in a gasoline and auto repair business---they had no employees. He had been a member of the International Brotherhood of Teamsters Local 309, and consequently displayed the union shop card and received union patronage because of the union's recommendations. Local 882 of the Teamsters, including used car salesmen, entered into an agreement with the used car dealers to close at 6 P.M. and no week end work. This agreement was not intended to apply to those with no employees. Hanke refused to keep the hours set forth by Local 882. Local 309 then took him off of its list as a union dealer and he turned in his union card. The union sent a single picket who peacefully picketed Hanke's business and who took the license number of those entering the business. Hanke consequently lost a great deal of business and supply houses refused to deliver necessary merchandise. He filed suit for damages and requested an injunction against defendant to stop the picketing.

The Court affirmed an injunction of the state courts against picketing designed to compel self-employed persons to convert to a union shop (that is, to abide by union regulations as to hours of work, when the work should be performed etc.) on the grounds that the Court would not interfere with the judicially declared policy of the state in striking a balance between competing social-economic interests. Mr. Justice Frankfurter in his opinion stated:

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17 International Brotherhood of Teamsters v. Hanke 339 U.S. 470 (1950).

"Peaceful picketing . . . cannot dogmatically be equated with the constitutionally protected freedom of speech. Our decisions reflect recognition that picketing is 'indeed a hybrid' . . . . The effort in the cases has been to strike a balance between the constitutional protection of the element of communication in picketing and 'the power of the State to set limits of permissable contest open to industrial combatants'".[18]

In Hughes v. Superior Court the Court again departed from its identification of picketing with speech. The digest of the facts and court ruling by the California Supreme Court is as follows:

Certain pickets were adjudged by a lower court to be guilty of contempt for violating an injunction prohibiting the picketing of a certain store to compel the selective hiring of negro clerks. The pickets expressed the desire of certain labor unions to see that Negro clerks were hired in a number proportionate to the number of negro customers. The picketing was peaceful and orderly.

The State Supreme Court held[19] that the injunction was valid and that the picketing to compel the selective hiring of Negroes was unlawful, since it was for an unlawful objective.

The Court pointed out that if the store had yielded to the demands of the union, there would have been in effect a closed union in favor of the Negro race among a certain proportion of the employees. Such a closed union would be no more lawful than a closed union in favor of white employees.

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18 70 S. Ct. 773, 775-776.

19 Hughes v. Superior Ct., 32 Cal. (2d) 850; 198 P. (2d) 885.

Such an arbitrary discrimination upon the basis of race or color had previously been prohibited by the California Supreme Court.[20] Not all peaceful picketing was guaranteed as free speech, but only that in pursuance of a lawful objective.

The Supreme court affirmed this decision and outlined its position through Mr. Justice Frankfurter as follows:

"However general or loose the language of opinions, the specific situations have controlled decisions. It has been amply recognized that picketing, not being the equivalent of speech as a matter of fact, is not its inevitable legal equivalent. Picketing is not beyond the control of the State if the manner in which the picketing is conducted or the purpose which it seeks to effectuate gives ground for its disallowance . . . . A state is not required to tolerate in all places and all circumstances even peaceful picketing by an individual."[21]

A final case on the free speech concept is now herein mentioned. The case is again discussed in Chapter V of this paper under the sub-heading Picketing and State "Right to Work" statutes.

A Virginia "Right-To-Work" Statute provides in substance that neither member-ship nor non-membership in a labor union shall be made a condition of employment; that a contract limiting employment to union members is against public policy; and that a person denied employment because he is or is not a member of a union shall have a right of action for damages. In

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20 James v. Marineship Company 25 Cal. (2d) 721 (1944). 15 LRRM 798.

21 70 S. Ct. 718, 721-722.

Local Union No. 10, United Association of Journeymen Plumbers and Steamfitters, AFL v. Graham[22] an injunction against peaceful picketing had been obtained by a contractor erecting a school building in Richmond, Virginia, some of whose subcontractors employed non-union labor. The Virginia Supreme Court refused to hear an appeal and affirmed the trial court without opinion. The United States Supreme Court granted certiorari.

The facts are as follows: The local trades council told the contractor that all non-union labor should be laid off or that "every effort would be made to prevent any union labor employed . . . on that project from continuing work thereon." The contractor refused to take any action; picketing began and work stopped. The sign involved read "This is not a Union Job. Richmond Trades Council."

There was usually one and never more than two pickets. There was no disorder. After 1½ days of picketing, a temporary injunction was issued which was later made permanent.

The union's position before the Supreme Court was that the injunction operated as a denial of free speech in violation of the Fourteenth Amendment. The Court disagreed, stating:

"The effect of the picketing was confirmatory of its purpose as found by the trial court. Petitioners here engaged in more than the mere publication of the fact that the job was not 100 per cent union. Their picketing was done at such a place and in such a manner, that coupled with established union policies and traditions, it caused the union men to stop

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22 31 LRRM 2444.

work and thus slow the project to a general standstill. . . ."

"Based upon the findings of the trial court, we have a case in which picketing was undertaken and carried on with at least one of its substantial purposes in conflict with the declared statutory policy of Virginia. The immediate results of the picketing demonstrated its potential effectiveness, unless enjoined, as a practical means of putting pressure on the general contractor to eliminate from further participation all non-union men or all subcontractors employing non-union men on the project."

The writer therefore reaches the following conclusions: AFL v. Swing is no longer the law and it appears evident that the doctrine in Senn and Thornhill, as amplified in Wohl and Angelos cases has been severely modified. Thornhill is also no longer the prevailing rule. While the case has not been expressly overruled, it has lost most of the weight and meaning it once had.

However, where no statutory law limits state policy, and no federal act has jurisdiction, the public policy of one state need not be, and is not necessarily the public policy of another state.

In summation the foregoing cases are authority for the following propositions: (1) Picketing is, among other things, free speech; however, neither the common law nor the fourteenth amendment confers the absolute right to picket. (2) States have the power to formulate and enforce, either through statutory law or through court decisions, their public policy. (3) This policy to be valid, must not run afoul of some specific constitutional prohibition or some valid federal law. (4) The Supreme Court will determine in each case whether a state's power has been exercised properly, but will not pass on the wisdom of such policy.

CHAPTER III

PICKETING UNDER FEDERAL AND STATE ANTI-INJUNCTION ACTS

THE FEDERAL ACT

The term "labor dispute" has resulted in cases which held that picketing for objects such as discussed in the Senn case and in the following Lauf case was not within the meaning of the definition of a "labor dispute" as defined in the Federal Anti-Injunction (Norris-LaGuardia) Act.[1]

Since 1937, a number of decisions involving the meaning of Section 13 of this Act have been handed down by the U. S. Supreme Court.

Jurisdiction of the Federal courts, under the Act, is dependent upon diversity of citizenship or the existence of a "Federal" question.[2] Jurisdiction is not dependent upon the existence or non-existence of inter-state commerce as in the National Labor Relations Act as amended.[3]

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1 Act of March 23, 1932, C. 90, 47 Stat. 70. U.S. code, Title 29, sec. 101 et seq.

2 By "diversity of citizenship" is meant that the parties to the controversy reside in different states. A "Federal" question arises under the Federal law, e.g., in a case involving picketing, the question of free speech under the First Amendment of the Constitution. For a Federal court to assume jurisdiction in either case, the amount involved in the controversy must be $3,000 or more.

3 Congress may, of course, increase or extend the injunctive powers of the Federal courts, as in the case of the Sherman and Clayton Acts, where, in "restraint of trade" cases, inter-state commerce must exist to give the Federal Courts jurisdiction.

Before any discussion of the Norris-LaGuardia Act can be undertaken, it is necessary to understand what the term "labor dispute" means.[4]

With respect to picketing, courts of the United States may not issue a restraining order or temporary or permanent injunction in any case involving or growing out of a labor dispute to prohibit any person or persons from:

> "giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud and violence."[5] However the U. S. Attorney General and the National Labor Relations Board can get injunctions in certain labor disputes regardless of the restrictions of the Norris-LaGuardia Act.[6]

The U. S. Supreme Court upheld the constitutionality of Sections 4 and 13 of the Norris-LaGuardia Act in the Lauf case.[7]

Mr. Justice Roberts, who delivered the opinion of the Court, reviewed the facts as found by the lower court. It appeared that the corporation

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4 Section 13 (c) of the Norris-LaGuardia Act reads as follows:

> "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 regardless of whether or not the disputants stand in the proximate relations of employer and employee."

5 Section 4 denies injunctive relief in certain cases. Section 7 explains under what conditions injunctive relief is granted.

6 Under the Labor Management Relations Act of 1947, since June 23, 1947 the Federal District Courts, upon the request of the U. S. Attorney General, can enjoin strikes that threaten the national health and safety (injunctions may be in effect for not more than 80 days.) The NLRB can get injunction against unfair labor practices by employers and unions in any case affecting inter-state commerce.

7 Lauf v. E. G. Shinner & Co. 303 U. S. 323 2 LRRM 585 (1937).

operated five meat markets in Milwaukee, employing approximately 35 employees; that a labor union had demanded that the employer require the employees as a condition of their continued employment to become members of the union. The employer informed the employees that they were free to join and that the company would offer no objections if they did so. The employees, however, refused to join the union. The facts showed that, for the purpose of coercing the company to force its employees to affiliate, the union conspired to do many acts that would be detrimental to the business of the employer. The district court held that such actions did not constitute a labor dispute within the terms of the Federal or State anti-injunction law.

The United States Supreme Court consented to hear the case because of an alleged conflict with a decision of the Wisconsin Supreme Court and a previous decision of the United States Supreme Court in Senn v. Tile Layers.

The opinion of the Supreme Court held that the lower court was in error for holding that no labor dispute existed between the parties. A pertinent section of the Wisconsin Labor Code was cited as follows:

> "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 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."

It was held that the lower court was bound by the ruling of the supreme court of the State which held "a controversy indistinguishable from that here disclosed to be a labor dispute within the meaning of the statute."

In the opinion of the court--

A Wisconsin court could not enjoin acts declared by the

statute to be lawful; and the District Court has no greater power to do so.

The Court also was of the opinion that the district court erred in granting an injunction in the absence of findings which the Federal anti-injunction law (Norris-LaGuardia Act) makes prerequisite to the exercise of jurisdiction.

The U. S. Supreme Court on March 28, 1938, held[8] that a federal court injunction may not be granted to prevent the picketing of a store by colored persons for the purpose of inducing the company to employ colored help. Such a controversy, the Court held, involved a "labor dispute" within the meaning of the Norris-LaGuardia Act.[9]

The case concerned a grocery company operating 255 grocery stores in the District of Columbia, and employing both white and colored persons. The New Negro Alliance, an association of colored persons (not a union) organized for the mutual improvement of its members, requested the grocery company to adopt a policy of employing colored clerks in certain of its stores. Upon the company's refusal, the Alliance placed a picket at the store.

However, in 1950, the Supreme Court upheld[10] a California state injunction enjoining similar activity.

These two cases prove that the power exists to permit or enjoin such picketing because two jurisdictions were involved federal and state, respect-

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8 New Negro Alliance v. Sanitary Grocery Co., Inc. 303 U.S. 552 (1938) 2 LRRM 592.

9 See Subsection (a) of section 13 of the Norris-LaGuardia Act. Also Subsection (b) and (c).

10 Hughes v. Superior Court 339 U.S. 460 (1950). See page 16 of this paper.

ively. The federal policy may be liberal, the state policy more restrictive, yet both are legal.

In the Wagshal case[11] the respondent owned a delicatessen which sold food and served meals. The owner obtained bread for the store from Hinkle's bakery. Deliveries were made by a driver for the bakery, a member of Local Union No. 35, one of the petitioners. The driver delivered bread at noon, which inconvenienced the respondent, since checking of deliveries at that hour interfered with serving of lunches. The respondent "required" the driver to deliver bread at another hour. Shortly thereafter the bakery informed the respondent that it would no longer furnish her with bakery products. Respondent made arrangements with another bakery which delivered bread at a more convenient hour.

Three weeks later the president of Local No. 35 claimed respondent owed the driver $150 for bakery goods. Respondent said she would pay Hinkle's bakery as she had done in the past. The President of Local No. 35 threatened to bar other products necessary to respondent's business.

Respondent sent the check to Hinkle. It was returned by the union president with a letter stating the check was owed to its member, the driver. The following the bakery which had been servicing the respondent stopped--saying the union threatened to pull its drivers. Through an effective boycott the union kept the respondent from obtaining bread from other bakeries and retail stores. The delicatessen store was also picketed.

Was this a "labor dispute" within the meaning of the Norris-LaGuardia Act and was the court therefore limited by its provisions? The Supreme Court

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11 Bakery Sales Drivers Union v. Wagshal U.S. Supreme Court, 21 LRRM 2nn.

ruled as follows: The question of the hour of delivery did not raise a labor dispute. This was a question of arrangement between two business men. The controversy over the bill was not a labor dispute because the driver's salary was not contingent upon his collections. Consequently, an injunction previously issued was upheld.

In another case[12] the U. S. District Court of Columbia granted a preliminary injunction restraining a union from picketing a licensee.

The plaintiff in this case operated a dance studio in Washington, D. C. under a licensing arrangement with a New York studio permitting her to use the name of the New York studio and its methods and materials in return for a percentage of the gross receipts of the plaintiff's business. The New York operator was engaged in a labor dispute, and some of its employees, together with other members of the defendent union (none of whom were employees of the plaintiff) picketed the studio in Washington.

In granting the preliminary injunction the court pointed out that its power to issue this injunction did not stem from the LMRA as amended, but from its inherent power to issue injunctive relief, unless such power is withheld in a particular case by the Norris-LaGuardia Act. The Norris-La Guardia Act was not applicable because it was not "a case involving or growing out of any labor dispute". There was no employer-employee relationship between the Washington studio and the pickets, and there was no way in which the plaintiff could give the pickets the relief they sought.

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12 Gomez v. United Office and Professional Workers, U. S. District Court, District of Columbia, (1947). 20 LRRM 2443.

STATE ANTI-INJUNCTION ACTS

Some states have enacted anti-injunction acts similar to the Federal Anti-Injunction (Norris-LaGuardia) Act.

The purpose of all anti-injunction legislation, both Federal and state, is best expressed in the declaration of policy contained in the second Section of the Norris-LaGuardia Act. "It is necessary that [the individual unorganized worker] have full freedom of association, self-organization and designation of representation of his own choosing." In 1936 the Supreme Court of Oregon defined the purpose of the Oregon Anti-Injunction Act in the following language: "Clearly one of the principal purposes of the Act was to protect labor from the abuses of unrestrained issuance of injunctions in industrial controversies.[13]

In the New York case Thompson v. Boekhout[14] the plaintiff Thompson was engaged in operating a motion picture theatre. For some time he had employed a duly licensed union projectionist. He dismissed his employee and also being a licensed projectionist, took over the duties formerly performed by the defendent Boekhout. The union picketed the theatre. The New York Supreme Court held that a "labor dispute," within the meaning of Chapter 477 of the laws of 1935 (adding section 876-a to the Civil Practice Act) was not involved and granted an injunction pendente lite restraining the union from interfering with the business of the theatre operator and from picketing, save by one man at a time.

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13 Geo. B. Wallace Co. v. International Assn. 155 Ore. 652; 63 Pac. (ad) 1090.

14 273 N. Y. 930 (1937).

The Court said: "Where the owner of a small business seeks to avoid "labor disputes" as defined in the statute by running his business without any employees, an attempt to induce or coerce him to hire an employee or employees, upon terms and conditions satisfactory to persons associated in such attempted inducement or coercion, is not a "labor dispute" within the letter or spirit of the statutory definition. We hold that the statute has no application in this case."

In the Boro Park Sanitary Live Poultry Market case[15] a New York corporation was wholly owned by four brothers and their mother, who were also the sole directors and officers of the corporation. The corporation had a contract with the union. The contract expired and never was renewed. Instead the stockholders of the corporation did the work themselves, the brothers getting weekly wages, the mother "support and contribution." The union contending that the stockholders were employers and not eligible to membership in the union picketed to induce or compel the corporation to employ union members. The corporation sued to enjoin the picketing without complying with the terms of the anti-injunction (akin to the Federal) act. The defendants' motion to dismiss having been granted by the court below, the corporation appealed. The New York Supreme Court held a labor dispute was involved. The stockholders having chosen the corporate form of business, and being paid as employees by the corporation, cannot ask the court to pierce the corporate entity. Nor is the fact that the union will not admit stockholders material, for the union may choose its own members and then endeavor to obtain employment

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15 Boro Park Sanitary Live Poultry Market v. Heller, 280 N.Y. 481 (1939). 4 LRRM 832.

for its chosen members.

In Baillis v. Fuchs[16] four co-partners were engaged in the business of distributing beer and soft drinks, some of which they also bottled in the city of New York and neighboring territory. They had in their employ thirteen drivers who had designated the union, Local No. 23, as their bargaining agent. After the partners had refused to enter into a collective labor agreement over wages and hours, the union called a strike. All thirteen employees responded to the strike call. The partners (all brothers) hired no other employees and claimed they did not intend to hire any. The question for decision was whether this was a "labor dispute" as defined in New York's Civil Practice Act.

The New York Supreme Court decided that the question of what constitutes a "labor dispute," even under the statutory definition, admits of no generally applicable and definitive answer. Of necessity the answer must depend upon the circumstances in the individual case. The Legislature has said:

> "The term 'labor dispute' includes any controversy concerning terms or coditions 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 employee, regardless of whether or not the disputants stand in the relation of employer and employee."

Thus, it is clear that the first essential for a "labor dispute" is employment. In Thompson v. Boekhout, where the proprietor of a small picture theater

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16 283 N. Y. 133 (1940). 6 LRRM 1085.

employing only one man discharged his single employee before a strike was called, there was no employment existing at the time of the strike, hence no "labor dispute."

In the present case the drivers were in the plaintiffs' employ when the strike was called, and the strike related to the terms of employment. There can be no question, therefore, of the existence of a "labor dispute" and the application of Section 876-a of the Civil Practice Act. . . ."[17]

A controversy between Employer and Individuals has been ruled[18] not a "labor dispute". In this case, where the union and the employer had a collective bargaining contract, some of the employees picketed on their own because they felt the union was ineffective in trying to improve certain working conditions.

Such action is unlawful, said the court, because in entering into a collective agreement the employees surrendered their right to act individually in matters concerning the agreement. Had the union authorized the picketing it would have been a labor dispute, but action by individuals was here not a "labor dispute" and was consequently not protected by the NLRA and a state court can enjoin this picketing under its general equity power, even where the picketing affects interstate commerce, because the NLRB has exclusive interstate jurisdiction only over "a labor organization or its agents."

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17 The question has arisen in some states whether the anti-injunction acts apply to disputes between employers and employees where the employer is not operating an "industry." Thus in State v. Cooper, 205 Minn. 333, picketing by a discharged chauffeur at the home was held not protected by the state anti-injunction act.

18 Weisfield v. Haeckel (Ore. Cir. Ct.) 28 LRRM 2055.

Picketing of an employer, because he sold to a customer not in good standing with the union was legal and held to be a "labor dispute" under the Washington anti-injunction law because of an agreement not to sell to such a customer with the union.[19]

In the case of Haleston Drug Stores v. Retail Clerks, the Oregon Circuit Court of Multnomah County ruled[20] that an employer is not entitled to a state court injunction because the union is picketing to obtain a closed shop which is illegal under the NLRA as amended. The evidence showed that the closed shop was not the sole union objective and that the dispute between the union and the employer involved wages, hours, and working conditions. This, then, constituted a labor dispute under Oregon's Little Norris-LaGuardia Act. The NLRB, which refused to take jurisdiction of the complaint of an unlawful labor practice, found that Haleston's business was essentially local in character. The NLRB was upheld by Circuit Court of Appeals and certeorari was denied by the U.S. Supreme Court.

Courts will also permit primary peaceful picketing of a multiplant employer at plants other than the struck plant.

Peaceful picketing by a union at a plant of an employer, in furtherance of a strike called by the union at another plant of the same employer after the expiration of a collective bargaining agreement, is lawful under Section 6 (3) of the Pennsylvania Anti-Injunction Act even though no-

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19 Marvel Baking Co. v. Teamsters' Union, Local No. 524, 105 Pac. (2d) 46. (1940) 7 LRRM 696.

20 Haleston Drug Stores v. Retail Clerks, Oregon Circuit Court, Multnomah County, October 28, 1952. 31 LRRM 2658.

strike contracts between the employer and other unions are in force at the picketed plant and some employees of the other unions remained away from work because of the picketing. Such picketing does not fall within the language of the Act as a "labor dispute" . . . which tends to procure the disregard, breach, or violation of a valid subsisting labor agreement.[21]

The state court said it had jurisdiction since such picketing is neither protected nor prohibited by Federal Act.

In Jonas Co. v. Electrical Workers Union No. 494, the Wisconsin Supreme Court ruled[22] that the provision of the Wisconsin Anti-Injunction Act (Sec. 103.62 (3) defining a "labor dispute" as a controversy between an employer and a majority of his employees in a bargaining unit is applicable in determining the legality of picketing by a union under the Wisconsin statute which makes it unlawful to picket "when no labor dispute, as defined in subsection (3) of section 103.62 exists."

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21 American Brake Shoe Co. v. International Assn. of Machinists, Pennsylvania Supreme Court, February 13, 1953, 31 LRRM 2398.

22 Jonas Co. v. Electrical Workers Union No. 494 Wisconsin Supreme Court, May 5, 1953 32 LRRM 2166.

CHAPTER IV

LEGALITY OF THE MEANS OF PICKETING - MASS PICKETING

VIOLENT PICKETING IN GENERAL

Mass picketing may be defined as the posting of large numbers of pickets in front of an employer's premise. Generally, the fact that a large number of people congregate at a certain place for certain reasons tends to produce certain effects. With respect to mass picketing, the courts and the National Labor Relations Board look into the facts in each case to see what the effect of the picketing was.[1] If mass picketing has the effect of barring non-striking employees from the plant, or of intimidating other persons (customers) even without violence, it is illegal and can be prohibited.[2]

The U. S. Supreme Court held in the Truax case[3] that mass picketing was illegal. In the American Steel Foundries case[4] the court limited the number of picketing men to one at each point of ingress and egress to the

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1 United Electrical Radio and Machine Workers, Local 1150, 84 NLRB 972.

2 United Furniture Workers (Colonial Hardwood Flooring Co.) 84 NLRB 563.

3 Truax v. Corrigan (1921) 257 U. S. 312.

4 American Steel Foundries v. Tri-City Trades Council (1921) 257 U. S. 184.

plant. In so doing, it developed what has been referred to as the "missionary doctrine." This, said the court, was not intended to be laid down as a "rigid rule" . . ." but only as one which should apply to this case . . . and may be varied in other cases."

The Superior Court of Los Angeles County[5] limited the number of pickets to ten persons, with no picket at a distance less than four feet from any other picket, except in passing.

The Washington Supreme Court has upheld[6] the granting of an injunction which restrained picketing through mass tactics but permitted peaceful picketing by a limited number of pickets.

In the case of Milk Wagon Drivers' Union, Local 753 v. Meadowmoor Dairies, Inc., the U. S. Supreme Court held[7] in a 5 to 3 decision that the Illinois courts were correct in granting an injunction to restrain all picketing, including peaceful picketing, if these peaceful activities had become closely associated with violence. The case concerned an injunction issued against a Chicago milk wagon drivers' union in a dispute with a dairy which used the so-called "vendor system" of milk distribution. Under this plan milk was sold to vendors operating their own trucks, and these in turn sold to retailers. The independent vendors worked at lower standards than the members of the union. In order to compel the abandonment of the system

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5 U. S. Electrical Motors, Inc. v. United Electrical, Radio and Machine Workers of America, Local 142 (1946) 116 P. (2d) 921. 17 LRRM 824.

6 Columbia Rivers Packers Association v. Hinton 62 Sup. Ct. 520 9 LRRM 403.

7 Milk Wagon Drivers' Union of Chicago v. Meadowmoor Dairies, U. S. 287 rehear. denied 312 U. S. 715. 4 LRRM 828.

the union began to picket the retail stores. In general, the picketing of the stores was pursued peacefully by the union over an extended period of time, but there were occurrences of acts of violence consisting of window-smashing, bombings, burnings and wrecking of trucks, shootings and beatings.

The majority opinion of the Court delivered by Mr. Justice Frankfurter, held that to restrain all picketing "set in a background of violence" does not involve infringement of the freedom of speech guaranteed by the fourteenth amendment, but is an exercise of the power of the State to prevent future acts of violence. The Supreme Court indicated that, in this decision, it was not passing on the wisdom of this injunction but merely upon the State's constitutional power. If the people of Illinois desire to withdraw the use of the injunction in labor controversies, they may do so by legislative act as has been done in some other states.

The Mississippi Supreme Court has held[8] that mass picketing by striking employees and non-employees, all members of the same union who engaged in violence, threats and intimidation against strike breakers entering the employer's plant, could be enjoined by a court of equity. A lower court had dismissed a bill for an injunction on the grounds, among others that the acts sought to be prohibited were crimes, which equity would not enjoin, and that a state court could not enjoin practices which affected interstate commerce.

The Mississippi Supreme Court, reversing this decision, held: (1) That criminal acts could be enjoined if they constituted a continuing trespass and would do irreparable injury to the employer's property; (2) That a State

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8 Southern Bus Lines v. Street Railway Employees (Mississippi Supreme Court, February 14, 1949). 23 LRRM 2397.

could, by its own police power, prevent unlawful interference with business and property, whether or not interstate commerce was affected; (3) In this power the State was held not to be prohibited by either the amended National Labor Relations Act or the commerce power of the Federal Constitution; (4) The mass picketing was illegal, even though no actual violence or physical assaults were shown, if threats and other means of intimidation deprived those against whom they were directed of the power to exercise their own will; (5) An injunction could be granted against all picketing in which previous actions of picketers had clearly indicated that further picketing would result in violence or intimidation; (6) The right of freedom of speech was held not to prevent the courts from protecting against coercion. To deprive the laborer and his employer of the right to contract for work was held to violate the due process clause of the fourteenth amendment to the Constitution.

UNDER STATE ACTS

The first decision of the U. S. Supreme Court arising under a State labor relations law which forbids unfair labor practices by employees was decided in 1942 in the Hotel and Restaurant Employees International Alliance v. Wisconsin Employment Relations Board.[9]

Pickets forcibly prevented the delivery of goods to one of the hotels. Numerous outbreaks of violence occurred. The cease and desist order of the Wisconsin E.R.B. was sustained by the Circuit Court of Milwaukee County and affirmed by the Wisconsin Supreme Court.

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9 314 U. S. 590 10 LRRM 384.

The decision in the case held that the free speech guaranty of the Constitution does not prevent an order against violent picketing. In this connection the Court said: "What public policy Wisconsin should adopt in furthering desirable industrial relations is for it to say so long as rights guaranteed by the Constitution are not abridged.

The U. S. Supreme Court has ruled[10] that a State may properly forbid participation in mass picketing as an unfair labor practice under a state act. This case resulted from an order of the Wisconsin Employment Relations Board finding a union guilty of unfair labor practices in mass peiketing accompanied by threats and assaults. The union challenged the entire Wisconsin Act as repugnant to the terms of the National Labor Relations Act.

In deciding the case, the Court asserted that States have the power to regulate picketing under their police power. That power was held to be limited only when it comes into conflict with the rights guaranteed by the Constitution or with the status of employees and their collective bargaining rights under the National Labor Relations Act or other Federal laws. "It has not been shown," the court said, "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."

A lower Idaho court held[11] that mass picketing and coercion, if engaged by a labor union, are not protected by the constitutional guaranty of

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10 Allen-Bradley Local No. 1111 v. Wisconsin Employment Relations Board 62 Sup. Ct. 820 (1942) 6 LRRM 1133 affirmed 10 LRRM 520.

11 Brunger v. Smith (Idaho District Court, Ada County, April 16, 1948). 22 LRRM 2049.

free speech.

The union engaged in mass picketing which prevented anyone--employee--customer, or patron--from going in or out of the employer's plant. Pickets stopped patrons and made threatening remarks.

A State law prohibiting the issuance of injunctions in labor disputes the court ruled, was immaterial under the facts, and the pickets' conduct was unlawful. The freedom-of-speech provision of the Constitution cannot be "used as a cloak for unbridled license or coercion," the court pointed out, and when peaceful picketing ceases to be used for purposes of persuasion, "it loses the protection of the constitutional guaranty of free speech, and a person or persons injured by its acts may apply to a court of equity for relief."

In another state decision the refusal of an employer to negotiate with a union while strikers were engaged in mass picketing was held[12] by a State court to be no defense to the grant of an injunction under the State anti-injunction law.

The union claimed that a refusal to negotiate showed that the employer had not made every reasonable effort to settle the strike--a condition for the grant of an injunction under the act.

The Court pointed out that the employer had engaged in negotiations with the union both before and after the beginning of the strike and the picketing. It held also that the mass picketing was illegal, since it was accompanied by threats of violence against non-strikers and supervisors and against employees attempting to enter an adjoining plant of another employer

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12 Continental Paper Company v. United Paper Workers of America (CIO) (New Jersey Superior Court, Chancery Division, October 5, 1949.) 24 LRRM 2596.

with whom the strikers had no labor dispute.

The employer had continued to negotiate until after the case had reached the court. It was unreasonable, the Court stated, to require further continuance of negotations in the face of the illegal picketing.

Mass picketing of an employer's store by a union which was overwhelmingly defeated in an employee election was held[13] to be for an unlawful object. There was violence, pickets carried untruthful signs.

It was claimed by the union that the picketing was to persuade the employees to join the union in its efforts to obtain a contract with the employer, and to get such a contract for the benefit of the two employees who voted for the union. (1) The Court held that the union's real purpose was to compel the employer to violate the State labor relations law by forcing the employees to join the union against their will; (2) The Court held the picketing to be contrary to the public policy proclaimed in the labor relations statute that a majority of employees, if they so chose, need not be represented by a union; (3) No denial of the constitutional right of free speech, had taken place, the Court said, in view of the violence and coercive tactics used by the union, and the untruthfulness of the picket signs. But, even without such violence, it stated, the picketing could have been enjoined because of its unlawful object.

THREAT OF FORCE - COERCION

An examination of cases that deal with the means of picketing shows a rather broad variation in the interpretation of the terms fraud, violence,

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13 Haber and Fink Inc. v. Jones (1950) 25 LRRM 2061, N. Y. Supreme Court, Special Term.

threats, intimidation or coercion. For instance, one court may find "intimidation" in certain epithets, gestures or jeers while another court may be of the opinion that no "intimidation" resulted from such actions. It is largely a matter of the basic economic views and biases of the judge who hears the case.

The National Labor Relations Board has ruled[14] that under certain circumstances mass picketing constitutes an unfair labor practice. Actions held to constitute restraint or coercion within the meaning of Section 8 (b) (1) (A) of the NLRA as amended[15] were: (1) Conduct of strikers and their companions in trailing a greatly out-numbered group of strike breakers around the touwn--considered an unspoken threat of violence; that the strike breakers were not thereby deterred from returning to work was held immaterial; (2) A union agent's threat to "beat up" a strike-breaker who had sworn at women pickets--held to be caused by a motive to discourage "scabbing" as well as anger at the treatment of women; (3) Interposition of passive force so that drivers had to choose between running down pickets or driving away from the plant; (4) Ordering pickets to "pull" passengers out of a car; (5) Massing 200 to 300 pickets, strikers, and other union members on the driveway leading to the employer's parking lot, thereby forcibly blocking cars carrying strike-

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14 In re Longshoremen's Union (79 NLRB No. 207, October 22, 1948) 23 LRRM 1001.

15 Section 8 (b) (1) (A) reads in part as follows: It shall be an unfair labor practice for a labor organization or its agents (1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7.. Section 7 reads as follows: Employees shall have the right to self-organization to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities, for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by agreement requiring membership in a labor organization as a condition of employment as authorized in

breakers to the struck plant.

The Board, discussing union responsibility, pointed out that no one of the activities by individual pickets was an unfair labor practice under Section 8 (b) (1) (A) unless authorized by the labor union. Since enactment of the Labor Management Relations Act, the same tests were held to apply to unions and to employers in the determination of responsibility for their agents acts. The burden of proof was held to be on the party alleging the agency relationship between the pickets and the union, both as to the existence of the relationship and as to the extent of the agent's authority. Since agency is a contractual relationship, authority of the union's agent might be manifested by the union's conduct, or even its passive acquiescence, as well as by words.

A union was held to be responsible for its agents' acts within the scope of their authority, even though such actions were contrary to particular instructions. The Board held that in this case the local union was responsible for the acts of restraint and coercion performed in furtherance of the general purpose of the strike. The international union with which the local was affiliated was also held responsible for these acts of coercion. The international's official newspaper reported that its regional director was assigned to guide officers of the local in conducting the picketing. Other evidence showed that the regional director while at the scene of the strike made no effort to stop the violence incited by officers of the local.

In the Case of Electrical Workers Union v. Cory Corporation[16] the

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Section 8 (a) (3).

16 Electrical Workers Union v. Cory Corporation (1949) 24 LRRM 136.

Union was charged with violating Section 8 (b) (1) (A) of the NLRA as amended by mass picketing. There was mass picketing but it was peaceful. The Union claimed that this was privileged under the "free speech" clause of the constitution, and to take away this right would violate "due process". The Cory Corporation entrance was blocked so that non-strikers could not enter the plant. There was also some threat of violence.

A "cease and desist" order was issued against some activity.

The test of coercion by mass picketing, whether or not accompanied by violence, is whether or not non-striking employees were restrained in their rights. The number of pickets is only material if it has the effect or potential effect to bar non-strikers from the plant if conducted on a work day. Thus, mass picketing on a Sunday is not coercion provided non-striking employees are not working that day.

Congregation in mass about 150 feet away from the plant entrance near the elevator entrance even though some employees were accosted is not coercion because it could not establish the identity of the persons nor that the conduct was calculated to obstruct the employees' access to the plant.

The attempted violence against supervisors had the effect of restraint and coercion upon "rank and file" employees because they were watching same and would naturally be coerced.

A shop steward's pre-strike warnings to an employee that she would lose her job if she did not join the union was coercion. However, the steward's identification of non-strikers was not coercion.

A striker's warning to employees a block from the Cory Company on their way to work, not to go to work, was held not to be coercive.

Some side issues on this case were: (1) Both the local and international union are liable for coercive acts (even if such acts were not authorized) when both the local and international jointly sponsor a strike after a breakdown in negotiations; (2) A shop steward, who participated in negotiations, acted as an agent of the local union when making threats of violence; (3) Unions cannot justify an unfair labor practice which they have committed on the grounds that the employer has also committed an unfair labor practice. Furthermore, an employer cannot commit an unfair labor practice in order to protect non-striking employees.

In United Mine Workers v. N.L.R.B.[17] thirty to forty autos drove up to the mine, blocking all access to it, threatened employees and forced truck drivers to dump their loads of coal. Later, when the company attempted to resume operations, the strikers drove up to the company's property (but did not go on it) and threatened those working with violence unless they quit working until the strike was over. Again a few weeks later, pickets went on company's property, threw rocks and assaulted several non-strikers. Other acts of violence and threats of violence occurred on other days.

The NLRB ordered the union to "Cease and Desist" all coercion. Physical violence is definitely coercion and violates Section 8 (b) (1) (A). Furthermore, the presence of representatives and officers of unions where pickets were restraining and coercing the non-striking employees establishes that the pickets were acting as agents of the union. If an agent is present when one act of violence is committed, it is assumed that he sanctions all acts even if not subsequently present.

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17 28 LRRM 1353 (1951) 95, NLRB No. 73.

A United States Court of Appeals[18] refused to enforce an NLRB order (1) to cease and desist from discouraging membership in or discrimination against a union, (2) to offer immediate reinstatement and back pay to 45 workers, and (3) to post notices in the plant for 30 days. The court held that striking employees were not entitled to reinstatement and back pay when they had refused to allow non-striking employees to enter the plant and when delivery of property to the plant had been impeded.

A picket line was established during the strike, which only those workers with cards signed by union officials could cross. Non-striking workers were kept from crossing the picket line by the pickets, who marched closely together in a circle "breast to back." Workers trying to enter the plant were "elbowed," and retreated before any serious violence occurred.

Unlike the National Labor Relations Board, the court found that the strikers' activities on the picket lines were not permissible under the act, and that, therefore, they did not have to be reinstated. It quoted from other cases to the effect that physical violence would have occurred except for the non-strikers' restraint.

Deliveries to and from the plant, it pointed out, had been impeded by the picket line; also, the method of peiketing was not proper since it was designed not to publicise the facts of the dispute but rather to exclude all non-strikers by force.

The court concluded by quoting from the Indiana Desk Company case[19];

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18 Rawleigh Co. v. NLRB (C.A. 7, July 9, 1951). 26 LRRM 1421.

19 NLRB v. Indiana Desk Co., U. S. Cir. Ct. of App. 7th Dist., 16 LRRM 817. (1945).

"To hold that the striking employees in this case are entitled to be reinstated, some of them with back pay, is to put a premium on their misconduct and to encourage like conduct on the part of others."

The Tennessee Court of Appeals held[20] that an injunction restricting picketing and forbidding violence during a strike extended to pickets who were not parties to the injunction proceeding, were not employees of the employer involved in the strike, did not wear a picket sign, and had no intent to violate the injunction. It, therefore, affirmed a judgment of contempt against the pickets.

An employer had obtained an injunction against striking employees, restraining them from picketing en masse and from threatening violence to non-striking workers. Notwithstanding the injunction, the strikers continued to picket in such a way as to block ingress to and egress from the employer's plant. They were joined by two persons who were not members of the employer's working force. One had left his employment prior to the strike. The other was picketing in place of his mother. Neither bore signs indicating that they were pickets.

In holding these persons bound by the injunction, and therefore in contempt for violating its mandate, the court stated: (1) "In view of the admitted sympathetic attitude of all the...(non-employees) for the cause, their availibility to assist in the act of obstruction, their close proximity to those actually effecting the obstruction, and their obvious approval of the act, it matters not which ones wore the signs, or physically stood in or walked across the driveway, or whether they were employees..."; (2) The court

20 American Snuff Co. v. United Steel Workers of America (CIO) Tenn. Ct. App., January 11, 1951, 27 LRRM 2301.

concluded that a person not a party to the injunction proceeding is nevertheless punishable for contempt, if, with knowledge of the injunction, he aids or abets another in violating it.

Instances of unlawful coercion occurred over a period of several days in an attempt to force employees of Gimbel Brothers Store[21] to join the union or to prevent their working because they refused to assist it. The Board agreed with the trial examiner's findings that the union was guilty of the following violations of law: "(1) escorting a telephone operator from her place of work under threats of violence because she was not a member of the union; (2) threatening a telephone operator that unless she donned a union button, she could not wor; (3) telling an employee that there would be a union shop and she would be dismissed if she did not join the union; (4) threats to an employee by a union shop steward that if she did not join the union she would lose her job; (5) telling an employee that she would have to join the union or get off the selling floor; (6) attempting to pull an employee from her office chair and physically eject her from the office; and (7) group interference with the work of a number of non-union sales clerks to get them to join the union by surrounding them on the selling floor--together with the customers they were trying to serve--and maintaining a loud, continuing commotion including name-calling."

The Board described this last violation as the equivalent of physical coercion. Harassment of sales personnel to a point where the communication between them and customers is seriously handicapped violates Sec. 8 (b)(1)(A)of the NLRA as amended, though there is no physical force applied.

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21 100 NLRB, No. 114 (1952), 30 LRRM 1365.

CHAPTER V

LEGALITY OF THE OBJECT OF PICKETING

A. IN GENERAL

Assuming that non-violence and a complete absence of any legal infraction marks the "how" of picketing, the employer may still demand that it be stopped because of the "why": the pickets seek to bring about some result which is claimed to be susceptible of judicial disapproval. The "why" therefore may easily overturn even such an otherwise constitutionally protected "how", which means that pickets must run a double gauntlet of "how" and "why." Picketing by illegal means or for illegal objects divests it from constitutional protection. What is formerly a constitutional right now becomes a legislative and judicial privilege.

Unions are subject to administrative injunction--cease and desist orders--when found by the National Labor Relations Board to be committing "unfair labor practices."[1] These practices include a strike or a concerted refusal to work on, or transport, materials or goods with the object of: requiring an employer or self-employed person to join a labor or employer organization; compelling an employer or other person to cease using or dealing

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1 Sections 8 (b) (1) to (6) inclusive of NLRA as amended.

in the products of another; or requiring another employer to bargain with a union unless that union has been certified by the National Labor Relations Board as the representative of his employees. Moreover, whoever is injured by any such strike may sue in a federal court, regardless of the amount in the controversy, and recover damages and costs. On the petition of the Board, the federal courts may enforce its orders or restrain the committing of unfair practices by injunction. Finally, an injunction is authorized on the suit of the government to halt any strike found, after inquiry by a board appointed by the President, to endanger the national health or safety. The latter injunction must, however, be discharged after a maximum period of eighty days.

B. SECONDARY PICKETING

Secondary picketing means that the persons (union) picketing have no dispute with the person (company) being picketed, but a dispute does exist between the pickets and their own employer, and the establishment being picketed usually does business with the pickets' employer.

It should be remembered that in 1942 the Supreme Court in the Wohl case, permitted union bakery drivers to picket the places of business of manufacturing bakers who sell to non-union peddlers and the places of business of customers of these peddlers.

Section 8 (b) (4) (A) of the amended NLRA forbids a union from inducing or encouraging employees of a neutral employer to engage in a secondary strike or boycott where an object is to compel the neutral employer to cease doing business with another employer.

The following cases will show how the NLRB under section 8 (b)(4)(A)

of the Act treats secondary picketing.

The NLRB held[1a] that the action of a union causing others to boycott the primary employer against whom the union was striking, was not within the prohibition of secondary boycotts specified in section 8 (b) (4) (A) of the amended NLRA. The fact that the union's lawful primary action also had a secondary effect did not make its action secondary.

Two oil companies, Pure Oil and Standard Oil, operating adjacent refineries used the same dock. During a strike of employees of Standard Oil the company which owned the dock, the dock was picketed, although, pursuant to a pre-strike agreement between the companies, Pure Oil was permitted to operate the dock with its own employees. Pure Oil employees refused to cross the picket line. A ship's crew was advised by the striking union that the dock was "hot" and that Pure Oil cargoes, though not originally "hot" were "hot" when they reached the dock. Accordingly, the ship did not pick up the cargoes. Pure Oil brought unfair labor practice charges against the union. The NLRB held for the union. The fact that picketing prevented Pure Oil employees, who refused to cross the line, from operating the dock, the NLRB held, was not an attempt by the union to make Pure Oil cease doing business with Standard Oil within the meaning of section 8 (b) (4) (A). The Board pointed out that any strike by its nature, was intended to inconvenience those doing business with a struck employer. The legislative history of the Act was held to indicate an intention to prohibit only secondary strikes and boycotts and not primary strikes.

[1a] In re Oil Workers International Union, Local Union 346 (CIO), (84 NLRB No. 38 June 6, 1949). 24 LRRM 1239.

In a ruling concerning the violation, by two local unions, of the amended NLRA, the NLRB held[2] that one union violated section 8 (b) (4) (A) by picketing the premises of three department stores to force the stores to cease doing business with a delivery company with whom the union had a dispute. The Board held that this same union also violated section 8 (b) (4) (B) by picketing the premises of the stores with the object of exerting pressure on the delivery company in order to gain recognition as bargaining representative, in the absence of a Board certification.

In issuing a cease and desist order against this union to forbid it from violating these sections, the NLRB declared that the order should be limited in its scope so that it would not prevent the union from picketing the primary employer (the delivery company) for the purpose of securing recognition as bargaining representative. The Board declared that Congress clearly did not intend to prohibit strikes against primary employers.

A fundamental principal of unionism, that union members do not work beside non-union men has been severly limited in three of the following four decisions dealing with secondary picketing under section 8 (b) (4) (A) of the NLRA as amended.

In the NLRB v. International Rice Milling Company case[3] a Teamsters' local union, which was not certified as a majority representative, picketed a mill with the object of securing recognition. In the course of the picketing,

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2 In re International Brotherhood of Teamsters (85 NLRB No. 181, August 31, 1949). 24 LRRM 1513.

3 NLRB v. International Rice Milling Company 341 U. S. 665 (1951). 28 LRRM 2105.

the union pickets induced and encouraged two men in charge of a truck belonging to a neutral customer of the mill to refuse to cross the picket line.

The Supreme Court found that the picketing was directed primarily at the mill and not at the neutral customer and that, even though the effect of the picketing may have been to induce the neutral customer not to deal with the mill, this effect was incidental. Thid did not constitute a violation of the act.[4] the law, it was said, specifically protected the right to strike any employer in a primary dispute;[5] this right was not to be impaired unless specifically indicated in the act. The fact that the picketing was limited to the geographic area of the mill was found significant. Further, the Supreme Court noted that there was no picketing of the customer as such. Finally, the Court found that the actual inducement of two employees of a neutral customer not to cross the picket line was aimed at individual action by such employees; there was no attempt or object to induce concerted activities of that customer's employees. As stated by the Court:

> "A union's inducements or encouragements reaching individual employees of neutral employers only as they happen to approach the picketed place of business generally are not aimed at concerted, as distinguished from individual, conduct by such employees. Generally, therefore, such actions do not come within the proscription of Section 8 (b) (4)."

In the Denver Building and Construction Trades Council case,[6] the Denver Building Trades Council became involved in a dispute with an electrical

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4 National Labor Relations Act as amended by Act of June 23, 1947, section 8 (b) (4) (A).

5 Ibid., section 7.

6 NLRB v. Denver Building and Constr. Trades Council (1951) U.S.S. Ct. 51 ALC 668. 28 LRRM 2108.

sub-contractor who refused to hire union men. The general contractor, as well as other sub-contractors employed on the job union workers. The council posted a picket at the project, stating: "this job unfair to Denver Building Trades Council" In addition, other craft unions affiliated with the Council, whose members were employed on the job, were notified by the Council of the electrical sub-contractor's refusal to hire union men, which action, under the bylaws of the Council, required the other craft workers to leave the job. Also the general contractor was warned that the situation would be difficult for him if the electrical sub-contractor did not employunion workers. Picketing continued for about thirteen days, during which time the entire job, except for electrical work, was shut down. At the end of this time the general contractor notified the electrical sub-contractor to get off the job. Work was then resumed.

The majority of the Court reasoned that, whatever the relationships between general contractors and sub-contractors might be as a practical matter as a matter of law each of these contractors or sub-contractors was a separate entity and, therefore, a separate employer.

Accordingly, since the building trades council's only complaint was against the electrical sub-contractor, the majority held it had no right under the NLRA as amended to direct its picketing at the entire job, which included the general contractor and sub-contractors with whom there was no dispute.

Since picketing directed at employers other than the electrical sub-contractor influenced the employees of the other employers to quit work, and thus forced the general contractor from doing business with the electrical sub-contractor, the picketing, according to the Supreme Court, was a clear

violation of the secondary boycott provisions of the NLRA as amended which, among other things, declares it to be an unfair practice "to induce the employees of any employer to engage in a strike where the object thereof is forcing or requiring any employer or other person to cease doing business with any other person."

The Council's bylaws made no distinction between the general contractor and any sub-contractors who might be on the job. Because of these bylaws, the Supreme Court found that the picketing amounted to a "signal in the nature of an order to members of affiliated unions to leave the job and remain away until otherwise ordered."

The case[7] in which Local 501 of the International Brotherhood of Electrical Workers was a party involved a situation similar to that in the Denver case. Its differences were these: Picketing was begun when no electrical work was in progress, no demands were made upon the non-union subcontractor directly, rather, the evidence disclosed that the picketing was directed at the carpenter sub-contractor or at the general contractor in order to force the termination of the electrical subcontract.

The principal distinction between this case and the Denver case is that there were no bylaws or other controlling practices of building trades unions shown to exist similar to those which were shown to exist in the Denver case. The IBEW case involved simple, peaceful picketing, but since the Supreme Court believed it was wrongly directed[8] the Court found it unlawful.

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7 International Brotherhood of Electrical Workers v. NLRB, 28 LRRM 2115. (1951).

8 Italics supplied.

The case[9] of Local 74, Brotherhood of Carpenters v. NLRB again presented an actual situation similar to that in the Denver and IBEW cases. However, no picketing was engaged in, but the Carpenters Union ordered its four carpenters off the job, this being done at a time when none of the non-union installation work was in progress.

The NLRB, the Sixth Circuit Court of Appeals and the United States Supreme Court found the Carpenters local guilty of an attempt to induce the employees of the carpenter contractor not to work, with the object of requiring the contractor to cease doing business with the installation contractor. The Court found it immaterial that another object was to enforce a union rule that members should not work on a project where non-union men are employed; any such union rule must bow to the express provisions of the Taft-Hartley Act.[10]

The decisions in the previous three cases indicate that the NLRA as amended makes it unlawful, in any building trades dispute where more than one contractor is engaged in construction work, to direct picketing at all of the contractors on the job where the actual dispute or grievance is with only one of its several contractors.

It is only where the entire building or construction is being undertaken by a single general contractor that picketing can be directed generally or at the job as a whole.

It is unlawful for one building trades union which has a dispute with

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9 United Brotherhood of Carpenters (1951) U. S. Supr. Ct. 28 LRRM 2121.

10 Italics supplied.

one of several contractors or sub-contractors working on a particular job to induce the craft employees employed by other contractors to quit their employment through picketing directed at such other contractors. It is only the contractor with whom the immediate dispute exists who can be picketed.

Union rules or bylaws or the bylaws of building trades councils that attempt to require all crafts working on a particular job to cease work in support of a particular craft which is engaged in a labor dispute may be regarded, in certain circumstances under the decisions, as evidence supporting a claim of violation of the NLRA as amended when used to require automatic as distinguished from voluntary quitting of work by craft workers other than those who have an immediate dispute.

The decisions indicate that the NLRA as amended has apparently destroyed what, up to this time, were considered legitimate and justifiable practices in the building trades industries, they also indicate that the act does not prevent or prohibit picketing or striking, even on a construction job, against a particular contractor or employer with whom a particular craft has an immediate and primary labor dispute.

However, any such strike or picketing must be on behalf of the labor organization that is affected, and the picketing and the picket signs must be directed only at the employer with whom the dispute exists or against whom complaint and protest is being made.

PRIMARY SITUS

The following four cases turn upon the definition of what is the primary situs of an employer.

In the Schultz case,[11] the employer moved its headquarters from New York City to New Jersey. There it entered into an agreement with a New Jersey local of the International Brotherhood of Teamsters covering its dirvers. Before the move, the company had been engaged in a collective bargaining dispute with a New York local of the same Brotherhood. Thereafter, when Schultz drivers went into New York, their trucks were followed by agents of the New York local. When they stopped at loading platforms belonging to neutral employers, their trucks were picketed.

A majority of the Board found this picketing to be lawful on the theory that each truck constituted a primary situs and thus the picketing was primary. A strongly worded dissent signed by two of the five board members objected to the conclusion that each truck should be regarded as a "roving" part of the employer's premises.

A second trucking industry case[12] involved an effort by Local 807 of the International Brotherhood of Teamsters to get certain work for its members. Sterling was a beer distributor in southeastern Massachusetts. Its drivers were members of a Massachusetts local of the Teamsters. As a part of the company's normal business, Sterling trucks made regular trips to New York City to pick up beer at the Ruppert brewery. Incidental to the loading and unloading at the Ruppert platforms was a limited amount of so-called terminal driving such as backing and moving from one platform to another. This driving had been done by Sterling drivers. Local 807 demanded that

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11 In re Teamsters Local 807 and Schultz Refrigerated Service Inc., 87 NLRB, No. 82. 25 LRRM 112 (1949).

12 In re Teamsters Local 807 and Sterling Beverages, Inc., 90 NLRB No. 75. 26 LRRM 1213.

it be done by its members as a means of increasing employment opportunities for New York drivers. Sterling refused. Local 807 placed pickets at the entrance to Ruppert's loading platforms.

A majority of the Board found a violation of the Act. In the Schults case picketing took place only while the Schults trucks were at the loading platforms. In the Sterling case the picketing continued after the trucks had left. Therefore it was illegal.

A third decision[13] further illustrates that picketing is legal when directed at the primary situs as herein defined by the Board.

The Ryan Company was awarded a contract to construct additional plant facilities adjacent to the main plant of Bucyrus-Erie Company. Both the old and new plant were on a large plot of land owned by Bucyrus and enclosed by a large fence. Bucyrus employees who were represented by Local 813 entered the old plant through the main gate. Ryan cut a new entrance through the fence for its construction workers. This gate was located at a distance of 500 feet from the main gate. It could be, but was not, used by Bucyrus employees. Local 813 became involved in a collective bargaining dispute with Bucyrus. A strike was called and pickets set up along the entrances, including the one used by Ryan's employees exclusively.

The General Counsel of the NLRB issued a complaint on the grounds that this picketing constituted an inducement of Ryan's employees to engage in a secondary boycott. A majority of the Board felt otherwise, adopting the theory that, whatever the objective of the picketing was, it took place at the situs of the primary employer and this was privileged.

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13 In re Local 813 and Ryan Const.Co., 85 NLRB 417. 24 LRRM 1424.

In the fourth and final case[14] the Interborough News Company was the operator of news stands throughout New York City. Its employees were represented by the respondent union. As a result of a collective bargaining dispute a strike was called and some of the newsstands were picketed. Officials of the union, which also represented drivers of various newspaper companies, advised these drivers not to deliver papers to the struck stands. In at least one instance, the inducement took place on the property of the neutral employer--the newspaper company.

The Board without dissent found no violation of the act. The theory was that inducement "invited action only at the premises of the primary employer." It means that any peaceful effort to get employees of a neutral employer to refuse to pick up or deliver at the premises where a primary strike is in progress is not a violation of the act.

In a situation where the primary employer does business, by means of trucks, at the door or upon the premises of a secondary employer, and the pickets follow the trucks, the problem arises as to whether the harm done to the second employer is merely "incidental" to the picketing and whether the picketing is "primary."

In the Sailors' Case[15] the Board declared that such picketing is lawful where it meets all of the following conditions: (1) The picketing is strictly limited to times when the situs of dispute is located on the

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14 In re Newspaper and Mail Deliverers Union and Interborough News Company, 90 NLRB, No. 297. 26 LRRM 1440.

15 Sailors Union of the Pacific, (Moore Drydock Co.) 92 NLRB, No.547 (1950). 27 LRRM 1108.

secondary employer's premises. (2) At the time of the picketing the primary employer is engaged in its normal business at the situs. (3) The picketing is limited to places reasonable close to the location of the situs. (4) The picketing discloses clearly that the dispute is with the primary employer.

Failure to meet one of the Board's criteria was shown to be sufficient to outlaw picketing.

Here though the pickets carried placards disclosing that their dispute was with the primary employer, they intimated to the third parties wishing to enter the premises that it would be unwise to deliver goods to the secondary employer.

The Board held[16] that the picketing was therefore directed, at least in part, at the secondary employer, undoubtedly for the purpose of inducing third parties to refuse to enter its premises and thereby to force it to cease doing business with the primary employer.

However, Section 8 (b) (4) (B) was violated by a union when it picketed the warehouse of the secondary employer (and not his place of business) to force it to cease doing business with the primary employer so as to force the latter to recognize the union where the union had not been certified as the representative of the primary employer's employees.[17]

PICKETING FOR RECOGNITION

Unions often picket for recognition because they are impatient with

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16 Boilermakers Lodge No. 92 v. Richfield Oil Corporation, 95 NLRB 1191. (1951) 28 LRRM 1436.

17 NLRB v. Service Trade Chauffeurs (Teamsters) U. S. Second Circuit Court of Appeals, New York, (1951). 28 LRRM 2450.

legal process since it might take one or two years to secure an order from the appropriate board requiring an employer to bargain. Before that is accomplished, the union's effectiveness may have become dissipated and the employees lose interest in joining the union. Furthermore, unions have never completely subscribed to the idea of majority representation before applying economic pressure.

By definition, stranger picketing may be said to exist when the picketing union represents none of the employees. Minority picketing is where the union represents less than a majority of the employees in the bargaining unit.

In stranger or minority picketing the strike cannot be utilized because strikes are effective only when employee sentiment is with the union.

For the purposes of this inquiry, the writer feels it is necessary only to set forth the different types of stranger or minority picketing, the opinions, in general as stated by the Federal and State boards, and various courts.

However a distinction will be made between "stranger picketing" as applied to situations dealing with a "sole employee" business and stranger or minority picketing in general of which the "sole employee" aspect is but a part.

The first general type of minority picketing considered is where one union pickets for bargaining status notwithstanding that another union has been certified by the appropriate state or federal agency as exclusive bargaining representative of all the employees involved.

The New York Court of Appeals in the Florsheim case ruled[18] that technically speaking, the certification of a specific union ended any "labor dispute" which might have existed. Thus any anti-injunctive legislation is inoperative and injunctive relief may be granted. The extent of the relief granted varies from case to case. Some courts enjoin all picketing, others permit picketing with placards stating that the employer is dealing with a certified union.

The second type is that which exists where the picketing union has been defeated in a labor relations board election, the employees having voted to reject all union representation. Here a union has no more right to picket than a union picketing in defiance of a certification.[19] However the court said: "If upon reflection there is some truthful information which the [union] wishes to impart to the public by picketing it should be privileged to make an application to Special Term for a modification of the injunction to permit picketing which is specified and proper."

The third type of recognition picketing occurs when there has been no certification of a rival union, no defeat of the picketing union in a labor relations board election, but the employer is dealing with another union on terms apparently satisfactory to the majority of his employees. Both blanket[20] and limited[21] injunctions have been issued by New York courts

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18 Florsheim Shoe Store Company v. Retail Shoe Salesmen's Union 28 N.Y. 188 (1942). 16 LRRM 653.

19 Lamanna v. O'Grady (1951) N. Y. App. Div. 27 LRRM 2552.

20 Affiliated Restaurateurs, Inc. v. Du Bois, N.Y.S.Ct. N.Y. (1951) 125 N.Y.L.J. 458.

21 National Foundry Company v. Quinnonez, N.Y.S. Ct. Kings Co. (1950). 27 LRRM 2004.

in this instance.

The fourth type of recognition or stranger picketing is where there is no certification of a rival union, no defeat of the picketing union in a representation election, and the employer is not dealing with another union--but is dealing with his employees on an individual non-union basis.

In the majority of cases, injunctive relief is withheld by the New York State Labor Relations Board and courts. However, an occasional injunction is issued.[22]

A state supreme court has recently ruled[23] that an employer is entitled to temporary injunction against picketing by a union representing less than a majority of his employees and seeking recognition as bargaining agent of all the employees, with condition that all employees belong to the union (union shop) because this is contrary to the state policy as expressed by court decision.

In 1950, the Supreme Court of Texas upheld[24] a trial court's injunction directed against picketing to compel an employer to grant a union shop, but ordered the injunction modified to permit picketing for lawful objectives by a union representing less than a majority of the picketed employer.

The employer requested an injunction against the picketing as a violation of a State law prohibiting such action by a union representing less than a majority of the employees of the picketed employer.

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22 Pennock Company v. Ferretti, N.Y.S.Ct. N.Y. CO. (1951) 27 LRRM 2493.

23 Klibanoff v. Retail Clerks Union, Alabama Supreme Ct., March 13, 1953. 32 LRRM 2036.

24 Construction and General Labor Union No. 688 v. Stephenson (Texas Supreme Court, January 4, 1950). 25 LRRM 2228.

The State Supreme Court held that a statute limiting picketing in a labor dispute to controversies between an employer and his employees was unconstitutional. Its decision was made on the basis of a United States Supreme Court decision[25] which ruled that working men could not be excluded "from peacefully exercising the right of free communication by drawing the circle of competition between employer and workers so small as to contain only an employer and those directly employed by him."

PICKETING A SOLE OWNER OR SMALL BUSINESS CONCERN

A change in Supreme Court views may be indicated by reference to the 1950 Hanke decision[26] which upheld a state's power to enjoin picketing of a sole-owner, sole-employee small businessman to compel him to become a union shop. Eight years previously a like question had been answered in the negative.[27] However, long before the Hanke case certain state courts held such picketing in judicial disapproval.

In 1923 in Yablonowitz v. Korn the court said: "A man has a right to conduct his business as he desires, and he shall not be driven out of business by a combination of persons, especially where he employs no workmen, and his family are the only ones who help him in the business."

The picketing of a small meat market by a butchers' union was held[28]

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25 AFL v. Swing, 312 U. S. 321.

26 International Brotherhood of Teamsters v. Hanke 339 U.S. 470 (1950).

27 Bakery and Pastry Drivers v. Wohl 315 U.S. 769.

28 Lyle v. Local No. 452, Amalgamated Meat Cutters and Butcher Workmen of North America et al., 124 S. W. (2d) 701 (1939) 4 LRRM 889.

unlawful by the Tennessee Supreme Court in a case where the proprietor employed no one to assist him.

A butchers' union was held by the Massachusetts Supreme Judicial Court[29] not to have the right peacefully to picket an employer for the purpose of compelling him to enter into a closed shop contract with the union. In this case, the three employees of the butcher shop did not belong to any union and no dispute existed between the employer and his employees.

In the case of Saveall v. Demers, the plaintiff, a resident of Massachusetts, ran his own barber shop and had no employees. He did not belong to the local of the Barbers' union, the membership of which included a number of barber shop proprietors who likewise employed no one, as well as a number of employees of master barbers who belonged to a master barbers' association. The association, with the approval of the union, raised the price of haircuts in the unionized shop to $1.00, but the plaintiff continued to charge fifty cents. The plaintiff refused to become a member of the union and refused to raise his price. The union peacefully picketed his shop.

The Court held:[30] (1) The Massachusetts State law prohibiting injunctions in labor disputes did not apply. No labor dispute was involved because this was primarily a dispute between proprietors over price policy, having no relation to employer and employee interests since the interest of employee members of the union in the controversy over prices was too remote to make it a labor dispute. The picketing, therefore, constituted a combination to d[illegible]

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29 Simon v. Schwachman, 18 N. E. (2d) 1, (1938) 3 LRRM 812.

30 Saveall v. Demers, Massachusetts Supreme Judicial Court, December 1, 1947. 21 LRRM 2180.

intentional harm to the business of another. (2) The Court refused to accept as absolute the doctrine that peaceful picketing is an exercise of the right of free speech. It qualified that doctrine by holding that picketing has a dual aspect. It is a weapon of economic pressure as well as a method of public expression or communication. Hence, it may be prohibited by injunctions in situations where it conflicts with public policy.

In another case, peaceful picketing was engaged in by a teamsters' union in behalf of an automobile salesmen's union. The object was to compel owners of a used car business, some of whom had no employees, to join either the teamsters' union or the automobile salesmen's union and enter into a contract to carry on business only during certain hours and days fixed by the salesmen's union.

The Supreme Court of Washington, affirming a lower court decree, held[31] the picketing to be unlawful and enjoinable.

It held that the interest of the owners and the community in preventing this coercion outweighed that of the union, inview of the small number of employees hired by car dealers.

The right of free speech was held not to be absolute where property rights were affected.

A union's peaceful picketing for the sole purpose of obtaining a contract with an Illinois employer whose employees had expressed a desire not to belong to the union may be temporarily enjoined without infringing on freedom of speech, since picketing for such a purpose is against the public policy of Illinois.

31 Hanke v. Teamsters Union(Washington Supreme Court, June 2, 1949.)

The union objected to the injunction on the grounds that it violated the Illinois Anti-Injunction Statute, (Chapter 48, Paragraph 2a of Illinois Revised Statutes 1952.)

However, the court found[32] that the lawful discharge of the only employee represented by the picketing union permits an injunction since the Act is applicable only to disputes between an employer and his own employees.

With reference to the public policy of Illinois, the court noted that Illinois legislation was silent on this point. However, said the court: "it is immaterial that a state's public policy is expressed by the judicial rather than the legislative branch." Then the court based its decision on the national policy as codified in the National Labor Relations Act, 29 U.S.C.A., paragraphs 157 and 158, also quoting the Gazzam case. "This [national public policy] is "an important and widely accepted one."

PICKETING TO REGULATE CLOSING OF STORE IN EVENINGS AND ON SUNDAYS AND HOLIDAYS

Decisions concerning picketing to regulate closing of stores in evenings and on Sundays and holidays have varied with the circumstances surrounding each case.

Since there was no statute in California either prohibiting or permitting peaceful picketing, the California District Court of Appeals based the following decision on the constitutional guaranty of freedom of speech. The right to picket peacefully the court declared,[33] is not confined

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32 Bitzer Motor Co. v. Teamsters Local 604 Illinois Appellate Ct. 4th Dist. 31 LRRM 2517 January 30, 1953.

33 Ex parte Lyons California 4th Dist. Ct. of App. 8th Dist., 81 Pac. (2d) 190 (1938). 3 LRRM 808.

to labor disputes, but extends to "a dispute between a business man and any citizen or group of citizens who may differ with him on a question of business policy." The court, therefore concluded that labor unions have the right to force stores to close on Sunday by a secondary boycott.

In 1942, the Illinois 4th District Court of Appeals ruled[34] that peaceful picketing of a small grocery store by a retail clerks' union in an effort to obtain from its owners a contract providing for the closing of the store in the evening and on Sundays and holidays is lawful as an exercise of the constitutional right of free speech although the store owners did not employ clerks or help of any kind and claimed they could not afford to agree to the closing hours provided by the contract, although the union had obtained similar contracts from other store owners employing union members in the same locality.

Peaceful picketing by a union to compel a grocery store owner to sign an agreement to operate his meat market only at certain hours was held[35] to be lawful and not enjoinable, as the employee operating the market was a union member. Although the employer claimed that the meat market operator was an oral "lessee" the Court found that in fact he was an employee.

Recently, however, the Washington state courts have ruled against such picketing and later the United States Supreme Court ruled in the Hanke case that this court would not interfere with the judicially declared policy

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34 Baker v. Retail clerks International Protective Assn. (1942) Illinois App. Ct. 4th District 10 LRRM 537.

35 Wright v. Teamsters Union, Local 690 (Washington Supreme Court June 24, 1949). 24 LRRM 2329.

of the state in striking a balance between competing social-economic interests.

Peaceful picketing by an automobile salesmen's union of a used car business whose owner was not a member of the union and never employed a salesman, in an effort to compel the owner to refrain from opening his business after one o'clock on Saturdays and to employ a union member and pay him a percentage of all sales made at the business, is unlawful because the picketing constitutes unlawful coercion upon the owner.[36]

PICKETING TO COMPEL AN EMPLOYER TO JOIN UNION AS INACTIVE MEMBER

State courts and boards have looked with mutual disfavor on picketing to compel an employer to join a union as an inactive member, both on a discriminatory basis and as a union unfair labor practice.

In the Riviello case the California District Court of Appeals held[37] that picketing to compel an employer to join a union on a discriminatory basis was unlawful and enjoinable.

Barber shop owners themselves worked as barbers, and employed other barbers, who were all members of a union. The union requested the employers to join--as inactive members not entitled to vote, to sit at meetings, or to hold office--under threat of picketing the barber shop and withdrawing the union barbers from it. As the action threatened would have stopped the employers' business, they petitioned for an injunction.

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36 Cline v. Automobile Drivers, Local 882 Washington Supreme Court (1949) 24 LRRM 2199.

37 Riviello v. Journeymen Barbers (California District Court of Appeals, 1st District, November 15, 1948) 23 LRRM 2120.

In granting the injunction, the Court stated that the union could have engaged in peaceful picketing to compel employers who are also workers to join the union on the same basis as the others. It could not compel them to become inactive members, who were given no additional rights. A union could not arbitrarily discriminate against one class of members.

The Supreme Court of Wisconsin held[38] that picketing to compel an employer to join a union as an inactive member and pay dues and initiation fees to it was an unfair labor practice in violation of the Wisconsin Employment Relations Act.

The employer operated a beauty shop with four employees. He had previously had a closed-shop agreement with the union and had a union-shop card, which could be displayed on condition that he comply with the union's conditions listed on the back. One condition was that the employer should be an inactive member of the union. When he refused to comply with this condition, he gave up the union-shop card on the union's request. He was thereupon picketed by the union. The employer filed a complaint with the Wisconsin Employment Relations Board, which ordered the union to cease picketing.

The State Supreme Court held that the picketing was for an unlawful object--to compel an employer to commit an unfair labor practice under the State law by contributing to the "financial support" to a union. The Court held that the prohibition was not limited to contributions of financial

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38 Wisconsin Employment Relations Board v. Journeymen Barbers, Hairdressers and Cosmetologists International Union of America Local 379B (Wisconsin Supreme Court, November 15, 1949) 25 LRRM 2083; affirming 24 LRRM 2457.

support in an attempt to dominate the union. The matter of support by employer dues and fees was held not so trivial as to be of no account.

RESPECT OF PICKET LINES

An employer does not violate the NLRA as amended by discharging an employer because of his refusal, in the performance of his duty, to cross a picket line of a union other than his own at a plant other than that of his employer, in view of a no-strike clause in the contract between his employer and his union.

The no-strike clause in the contract was not rendered illegal because the contract also contained an illegal union-security clause which was illegal under the NLRA as amended, in view of the savings and separability clause in the contract.[39]

A union cannot expel a member for refusing to honor the union's picket line set up at another plant. The union violated the law by fineing the employee and demanding the discharge. This restrained the employee in exercising the right to refrain from union activity as granted in the NLRA as amended.[40]

In the Illinois Bell Telephone Company case the Board ruled that the demotion of eight supervisors, who refused to cross a picket line set up by a union, other than the supervisor's union, engaged in an economic strike, was unlawful. The case was appealed to the Circuit Court of Appeals. This

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39 NLRB v. Rockaway News Supply Co. Inc. U. S. Supreme Court 31 LRRM 2432 (1953).

40 Clara Val Packing Company 87 NLRB 703 (1949). 25 LRRM 1159.

court, reversing the Board's decision, upheld[42] the company's right to demote these supervisory employees. The court reasoned that these supervisory employees did not engage in concerted activities for their own mutual aid and protection, because their action would help another union which had no power to obtain benefits for them. They refused to cross the picket line on a matter of principle and did not act as a combination or did not act in concert but in their own individual capacities. They were, therefore, not engaged in a strike protected by the act, and the employer had a legitimate right to discharge them. The Supreme Court refused to review the decision.

In Winkelman Bros. v. International Brotherhood of Teamsters, a Michigan Circuit Court held[43] that a nationwide agreement among members of all teamsters unions, that no union man will cross any union picket line is invalid as violative of Michigan's anti-monopoly law[44] and a Michigan statute[45] outlawing threats to force employees to become union members.

PICKETING A RESIDENCE

Pickets walked in front of non-strikers' homes, carrying placards referring to the non-strikers as "scabs" and accusing some of them of having crossed the picket line. The picketing conveyed no information about the strike or the labor dispute out of which the strike arose.

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42 NLRB v. Illinois Bell Telephone Co. 189 F (2d) 124 (1951) CA, 7th, 28 LRRM 2079, cert. denied U.S. Supreme Ct. 29 LRRM 2111.

43 Winkelman Bros. v. International Brotherhood of Teamsters, 31 LRRM 2017 (1952).

44 Michigan Statutes Annotated, Section 28.62.

45 Michigan Statutes Annotated, Section 17.454 Paragraph 18.

An Ohio court held[46] that picketing unaccompanied by physical violence is not absolutely protected by the constitutional right of free speech.

This picketing was found to intimidate and coerce the non-strikers into joining the strikers.

What the U. S. Supreme Court had protected as an expression of free speech in the Thornhill case[47] the court declared, was picketing for a "dissimination of information surrounding the facts of a labor dispute."

The language of the Supreme Court in the Wohl case[48] was quoted: "A state is not required to tolerate in all places and under all circumstances even peaceful picketing by an individual."

The Ohio court went farther. It declared that, even if the purpose of the picketing had been to dissiminate information surrounding the facts of a labor dispute, the picketing of private residences should, nevertheless, be restrained, because the allowable area of economic conflict should not be extended to invading the privacy of the home.

STATE ANTI-CLOSED SHOP LAWS

State anti-closed shop laws are also known as state "Right to Work" and "Open Shop" statutes. Such legislation takes many forms. For example, Arkansas makes it a misdemeanor to enter into a union security contract.

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46 Pipe Machinery Company v. De More (Ohio Court of Appeals, (8th District) October 27, 1947. 21 LRRM 244.

47 Thornhill v. Alabama, 310 U.S. 88.

48 Bakery and Pastry Drivers v. Wohl, 315 U. S. 769.

Georgia law forbids all forms of union security agreements and makes such contracts illegal. Iowa forbids all forms of closed shop agreements. Kansas prohibits closed shop agreements without majority vote of employees.[48a]

Within states which have prohibited all forms of union security, unions and employers, despite their coverage by federal law, may not execute any form of union security arrangement.

While the LMRA makes the closed shop illegal, it does permit a restricted form of union shop and maintenance of membership shop. However, more restrictive state laws take precedence over the union security provisions of the national law.[49]

At present writing only the Railway Labor Act legalizes union security arrangements in the railway and airline industries specifically over-riding state laws regulating or prohibiting union security arrangements.[50]

Between 1943 and 1947 a number of states passed such measures forbidding interference with the right to work, to buy or sell labor, because the worker was or was not a member of a union.[51]

The Supreme Court of the United States, in the case of Cole et al

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48a Prentice-Hall Labor Course, 1954, Par. 11, 182.

49 "Nothing in this Act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law." Section 14 (b) LMRA.

50 P. L. 914, 81st Cong., 2nd Sess., approved January 10, 1951.

51 By constitutional amendment in Arizona, Arkansas, Florida and South Dakota; by statute in Georgia, Iowa, Nebraska, North Carolina, Tennessee, Texas and Virginia, Wisconsin, North Dakota, Nevada.

v. State of Arkansas, unanimously upheld[52] the constitutionality of the Arkansas anti-picketing statute making it illegal for two or more persons "to assemble at or near any place where a 'labor dispute' exists and by force or violence prevent or attempt to prevent any person from engaging in any lawful vocation." The Court contended that this interpretation does not abridge the constitutional right of freedom of speech or assembly. Those accused of violating this statute were strikers who had assembled near the entrance to the plant, but apart from the picket line. Promotion of an assembly whose purpose is to wreak violence, said the Court, is not the exercise of free speech.

Picketing for the "closed shop" has been dealt with by the Tennessee Supreme Court. The court had previously ruled on the constitutionality of the State "open shop statute" making it unlawful for an employer to deny employment because of membership or non-membership in a labor union.

Subsequently, in order to permit peaceful picketing, the court on a petition for rehearing, modified an injunction which had been granted against a union. Thereupon the employer petitioned the court for a clarification of the modified injunction, seeking to learn whether peaceful picketing for a closed shop was permitted under the modification.

The court held[53] picketing for the purpose of compelling employers to sign a closed-shop contract in violation of the open-shop statute was unlawful

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52 Cole et al v. State of Arkansas (1949) 25 LRRM 2100.

53 Moscari v. International Teamsters Union (Tenn. Supreme Court, June 12, 1948). 21 LRRM 2444. See also: Lincoln Federal Labor Union v. Northwestern Iron and Metal Co. U.S. Supr. Ct. 23 LRRM 2199 (1949).

because even when carried on peacefully, it constituted picketing for an unlawful purpose, being contrary to the public policy of the state.

Picketing by a teamsters union at a baking company's plant and places of business of its customers in an effort to force unwilling "driver salesmen" of the bread company to join the union or to induce the company to insist that they join the union is unlawful[54] and enjoinable because the object of the picketing is unlawful in that it is violative of the public policy of Michigan as declared in its state statute which makes it unlawful to force persons to become union members.

Picketing at a place of business of the baking company's customers in an effort to induce them to refrain from purchasing the company's products, is an unlawful secondary boycott.

PICKET SIGNS

The word "unfair," when applied to an employer by a labor union, has a different meaning from the ordinary sense of the word. It is generally conceded to imply that a particular employer is acting in opposition to the interests of organized labor. Thus the word has not generally been considered by the courts to be libelous per se. For example, in the case of Blossom Dairy Company v. International Brotherhood of Teamsters[55] the court said: "It [unfair] appears to be merely a word of disapprobation, or invective, loosely applied to any person or practice, which fails to meet the approval,

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54 Way Baking Company v. Teamsters Local 164 AFL Michigan Supreme Court January 5, 1953. 31 LRRM 2246.

55 23 S.E. (2d) 645 W. Va. Supr. Ct. of Appeals (1942) 11 LRRM 794.

for the time being, of the protesting labor organization. At most, . . . /It is/ ordinarily a mere expression of opinion, or of a conclusion."

However, courts do take particular note of the circumstances under which it is used. The reader will recall the court's treatment of picket signs in cases under stranger or minority picketing.[56]

In a recent case, the Kentucky Court of Appeals held[57] that an "unfair" charge must be warranted, and cannot be made indiscriminately and unqualifiedly.

A restaurant owner had his handyman do a small paint job on the front door of his restaurant. A month later an ad was inserted in a local newspaper by an organization of unions accusing the restaurateur of being "unfair" to "members of labor" with no explanation as to how or in what way. Neither the "central union" nor the painters union had complained to the restaurant owner prior to the appearance of the ad. The owner brought suit against the central and the newspaper, charging them with libel and claiming damages for loss of business. The court held this was no controversy and said: /Making a general accusation of unfairness/ "expresses something more than an opinion and labor unions have no special right to use this expression arbitrarily and without responsibility which could reasonably justify the intentional damage of an employer's business."

The trial court's verdict of $5,000 damage against the union and $1,000 against the newspaper was affirmed.

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56 See pages 59 through 63 of this paper.

57 Paducah Newspapers, Inc. et al. v. Gerald Wise 30 LRRM 2071 (1952).

The Supreme Court of the United States, in the case of Casselman v. State of Idaho, sustained[58] an Idaho statute forbidding secondary boycotts in "labor disputes," by refusing to review a lower court decision. Striking pickets (employees of the Western Electric Company, a subsidiary of the Bell Telephone System), were charged with violation of the Idaho law, because the placards they carried in picketing a building, which housed both the parent company and the subisdiary, did not say that the labor dispute was limited to the latter.

Untruthful picket signs falsely stating that a strike is in progress is unlawful and subject to judicial restraint.[59]

Picketing with signs which state truthfully that the employer fails to employ union labor is lawful, in the absence of any state statute expressing any different public policy.[60]

Non-union employees of a food market are not entitled to an injunction restraining a clerks' union from picketing peacefully with placards stating truthfully that the market does not employ union clerks, there being a labor dispute and no interference with the right to work. Such picketing is a lawful exercise of free speech.[61]

A union which has been unable to organize the employees at a plant of

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58 Casselman v. State of Idaho, Idaho Supr. Ct. (1949) 24 LRRM 2056. cert. denied 25 LRRM 2129.

59 Shenker Displays Inc. v. Slankowitz 100 NLRB No. 59 (1950) 30 LRRM 1286.

60 Torrington Drive-in Corp. v. IATSE 17 Conn. Supr. 417 (1951)

61 Bean v. Retail Clerks Union, 32 LRRM 2016 Ohio Court of Common Pleas February 4, 1953.

of a clothing manufacturer, does not have the right to picket the retail stores of the manufacturer with signs stating that its clothes "are not union made" and "do not have a union label," since the picketing was for the unlawful object of forcing the manufacturer to pressure the employees at his plant to join the union. Such Picketing does not have legal justification on the theory that the union is exercising its right of free speech by advertising the desirability of "union labeled" clothing.[62]

Picketing at an employer's store with misleading signs, in an effort by the union to organize certain employees after they had voted unanimously for no union in an election conducted by the New York Labor Relations Board, is unlawful because the object and the means of the picketing are unlawful.

The signs in question read: "KNOWLSON'S IS NON-UNION by vote of its employees. This is not a strike" etc. The lettering in favor of the union was in large type and the lettering in favor of the store and employees was printed in much smaller type. This was held[63] unlawful and enjoined.

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62 Richman Bros. v. Amalgamated Clothing Workers of America Ohio Court of Common Pleas April 14, 1953 32 LRRM 2065.

63 Saperstein v. Rich New York Supreme Court August 21, 1953, 31 LRRM 2059.

CHAPTER VI

SUMMARY AND CONCLUSION

This paper has attempted to show, within a relatively limited area, the legality or illegality, as the case may be, of the means and objects of picketing from 1937 to 1953. From this we can attempt to indicate those areas wherein the courts will allow or disallow this particular labor technique to operate.

Beginning with Senn v. Tile Layers, Justice Brandies said in effect, that if a state wished to pass a law permitting picketing for such objects as set forth in the Senn case, it was free to do so and the Supreme Court would not interfere for: "members of a union might without special statutory authorization by a State, make known the facts of a labor dispute, for freedom of speech is guaranteed by the Constitution."

Three years later the United States Supreme Court speaking through Mr. Justice Murphy held an Alabama statute, banning all picketing invalid "on its face."

These decisions led many to believe that peaceful picketing, being the equivalent of freedom of speech, could not be abridged. An analytical reading of the cases in point show that such an interpretation is not correct.

For the following ten years, peaceful picketing and its identification with the free speech concept remained virtually unchanged.

During this time, however, the state courts exercising their inherent power to regulate the internal affairs of the states, continued to regulate peaceful picketing. Sometimes these courts followed the doctrines of Senn, Thornhill and Swing, and sometimes they seemed to stand in opposition to the federal position.

It must be remembered that the earlier federal cases, with the exception of the Ritter case, had permitted secondary picketing. It was, however, the ruling in the Ritter case and the passage in 1947 of the Labor Management Relations Act, which expressly prohibited secondary picketing, that necessitated a resolution of the apparent conflict in federal public policy.

The Supreme Court met the issue squarely in the first of four cases upon which rests the judicial federal policy at this writing.

In Giboney v. Empire Storage the Court ruled that no union can "assert a constitutional right in pickets to take advantage of speech or press to violate valid laws designed to protect important interests of society." While in this specific instance the ruling applied to the violation of a criminal statute, the Court a year later, extended this doctrine to apply to a civil statute in the Gazzam case and to a case in which no legislation was involved, namely the Hanke case.

Now it is pertinent to note two significant statements by Justice Frankfurter. In his opinion in the Hanke case he stated: "Peaceful picketing . . . cannot dogmatically be equated with the constitutionally protected freedom of speech . . . picketing is indeed a hybrid . . . . " And in Hughes v. Superior Court he said: " . . . picketing not being the equivalent of

speech as a matter of fact, is not its inevitable legal equivalent . . . ."

The Supreme Court in the Thornhill case decided that peaceful picketing was the equivalent of free speech. The rule used to determine the extent to which freedom of speech is protected before it can be abridged by state action was set forth by Mr. Justice Holmes in Schenk v. United States.[1]

> "The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about substantive evils that . . . [the state] has a right to prevent."

Now the Supreme court says that peaceful picketing and free speech are not identical. The clear and eminent danger rule may be supplanted by the test of reasonableness. Therefore, the conclusion that peaceful picketing, under the test of reasonableness can be ultimately confined to extremely narrow limits seems to be justifiable.

The present position of the Court implies that the Thornhill and Swing decisions have been overruled and are no longer the law.

The Graham case further amplified the rule laid down by the Supreme Court in the Hanke, Cazzam and Hughes cases when the court ruled that the established union policy and tradition that union men refuse to work with non-union men was illegal if the public policy of the State declared it to be so.

The Court had already ruled in the building construction cases that union rules must bow to the provisions in the National Labor Relations Act as amended; now they must also give way before any valid state statutory public

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1 249 U. S. 47. (1919).

policy. Unless prior commitments have been made, in the form of a contract between an employer and the unions involved, it appears that picketing to maintain an all union job is likely to be illegal under the law.

What has been written in summation thus far may be said to apply to picketing and free speech in general. However, it will be found also to apply to any organizational, minority, and stranger picketing.

To continue the analysis, the term "labor dispute" will be re-examined. Under the Norris-LaGuardia Act and most state acts it includes any controversy concerning terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relations of employer and employee.

Even under such seemingly broad and all inclusive coverage, various state courts have ruled that certain types of stranger picketing, and the picketing of self-employed persons is not a "labor dispute" and therefore illegal.

A further and perhaps highly significant development can be noted in an amendment to the Wisconsin Anti-Injunction Act which now defines a "labor dispute" as "a controversy between an employer and a majority of his employees in a bargaining unit . . ."

It can be reasonably concluded that a strict interpretation of this section would automatically ban all minority and stranger picketing when the NLRA as amended is not applicable.

Considering the legality of the means of picketing it can be categorically stated that mass picketing, violent picketing, or picketing enmeshed with violence, threats, coercion, and intimidation are all illegal. The courts and the various labor relations boards will enjoin any and all such

activity.

Secondary picketing, as part of the problem of the secondary boycott, poses the most complex and confusing aspects of labor law. While the definition appears to be well differentiated, such differentiation (between a primary and secondary boycott) is not very helpful in practice, since most primary boycotts necessarily require an appeal to outside parties to cease doing business with a specific employer or firm.[2]

If the courts find the picketing to be primary, even though the effect of the picketing may have been to induce outsiders not to deal with the primary employer, this effect would be ruled incidental and such picketing would, therefore, be judged to be legal. However, if there is an attempt to induce concerted activities of the outsider's employees, the picketing would be held illegal under the NLRA as amended. The Supreme Court's rulings in the construction cases are authority for the previous statements.

Furthermore, these decisions indicate that the NLRA as amended makes it unlawful for a union to induce craft employees employed by other contractors to quit their employment through picketing directed at other contractors. It is only the contractor with whom the immediate dispute exists who can be picketed. Union rules or bylaws that attempt to require all crafts working on a particular job to cease work in support of a particular craft which is engaged in a labor dispute may be in violation of the NLRA as amended.

What the NLRB has defined as a primary situs is to be considered as

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2 Charles W. Anrod and Benjamin L. Masse, "The New Labor Laws," America Press page 82. For an amplification of this viewpoint read pages 80 to 84 in this pamphlet.

simply a yardstick to be used as each case arises. When the picketing is adjudged not to be at the primary situs it is usually considered to be secondary picketing. Modifications can be expected to be made as the concept is developed or limited.

The courts now take a dim view towards minority or stranger picketing. The basis underlying the courts' prevailing viewpoint rests on the fact that unions have and should use other means open to them. Real representation can be acquired through organizational drives followed by elections which can then better determine the status of the union and the probable legality of any subsequent picketing.

Picketing a sole owner or small business concern is illegal where there is no dispute between an employer and his employees. However, if there is a union worker employed and the dispute concerns wages, hours or working conditions, picketing has been permitted. But the Hanke decision leaves little doubt as to the illegality of picketing a sole owner business.

Thus it seems reasonable to conclude that state courts will rely heavily on the Gazzam and Hanke cases in interpreting future public policy in this area.

The legality of picketing to regulate the closing of a store in the evenings or on Sunday seems to depend to some extent upon union representation, contractual relations within the industry, and the public policy of the particular state wherein it occurs. It can be noted that the Hanke case is cited in this area of dispute and has been ruled as controlling thus making such picketing illegal.

Another area of picketing frowned upon and outlawed by the courts is

picketing to compel an employer to join a union on a discriminatory basis. This is categorically prohibited under federal and state judicial policy.

The LMRA gives workers little protection of the right to cross a picket line when such lines are those blocking the premises of an employer other than his own employer. He can in most instances be discharged if he fails to cross a picket line established at the premises of another employer. The employer can require the employee either to perform his duties or vacate the job so that a replacement can be obtained. Thus it appears that the worker, in such cases, must choose to refrain from union activity or take the risk of losing his job.

It is this writer's opinion that the recent and numerous state anti-closed shop laws, which have among other things, seriously limited picketing, will continue to plague union picketing by placing more and more restrictions upon it. The recent Graham case seems to offer an excellent example in point. A single picket carried a sign at a building construction site which truthfully stated: "This is not an all union job." An injunction was granted. Thus it seems that even truthful, peaceful picketing, when carried on in a state which determines its public policy toward picketing by a narrowly drawn statute, may effectively control this labor technique with little to fear as the the Constitutional validity of the statute.

In final summation, the writer believes that the following propositions based on the historical inquiry herein undertaken, are justifiable. (1) The concept and identification of peaceful picketing with "free speech" which placed it under the protection of the First Amendment of the Constitution is waning. (2) The concepts that picketing is "more than free speech" ---

"is indeed a hybrid" and, "is not the equivalent of speech as a matter of fact therefore not its inevitable legal equivalent," further removes this labor technique from the Constitutional protection of the first amendment.

(3) The viewpoint that picketing is an economic technique seems to be emerging. A projection of this concept could remove picketing completely from Constitutional protection and confine it to the area encompassed by statutory and judicial privilege.

BIBLIOGRAPHY

FEDERAL ANTI-INJUNCTION (Norris-LaGuardia) ACT, act of March 23, 1932, c. 90, 47 Stat. 70. U. S. Code, Title 29, sec. 101 et seq. An act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes.

LABOR MANAGEMENT RELATIONS ACT, 1947 (Taft-Hartley Act), act to amend the National Labor Relations Act, to provide additional facilities for the mediation of labor disputes affecting commerce, to equalize legal responsibilities of labor organizations and employers and for other purposes.

NATIONAL LABOR RELATIONS ACT, act of July 5, 1935, amended by act of June 23, 1947. An act to diminish the causes of labor disputes burdening or obstructing interstate and foreign commerce, to create a National Labor Relations Board, and for other purposes.

LAW REPORTERS

LABOR RELATIONS REFERENCE MANUAL, published by the Bureau of National Affairs, 24th and N Streets, N. W. Washington, D. C.

Vol. 2.	Vol. 21.
Vol. 4.	Vol. 22.
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Vol.17.	Vol. 32.
Vol.20.	

NATIONAL LABOR RELATIONS BOARD REPORTS.

Vol.84.	Vol. 91.
Vol.85.	Vol. 92.
Vol.87.	Vol. 95.
Vol.90.	

NEW YORK SUPPLEMENT containing the decisions of the Supreme and lower courts of record of New York State. West Publishing Company, St. Paul.

Vol. 273.
Vol. 280.
Vol. 283.
Vol. 288.

UNITED STATES REPORTS, cases adjudged in the Supreme Court of the United States. Government Printing Office, Washington.

Vol. 257.
Vol. 287.
Vol. 301.
Vol. 303.
Vol. 310.
Vol. 312.
Vol. 314.
Vol. 315.
Vol. 336.
Vol. 339.
Vol. 341.

SECONDARY SOURCES

A. BOOKS

NATIONAL LABOR RELATIONS BOARD, SEVENTEENTH ANNUAL REPORT for the fiscal year ended June 10, 1952: United States Government Printing Office, Washington 25, D. C.

B. PAMPHLET

Charles Anrod and Benjamin L. Masse, "The New Labor Laws," America Press.

C. PERIODICALS

George Washington Law Review, March 19, 1953. George Washington University, Washington, D. C.

Fordham Law Review, March 1953. Fordham University School of Law 302 Broadway, New York 7, New York.

Labor Law Journal, January 1953. Commerce Clearing House, Inc. 214 North Michigan Avenue, Chicago 1, Illinois

Oklahoma Law Review, May 1950. College of Law, Oklahoma University, Norman, Oklahoma.

Saint Louis University Law Journal, Winter 1951. St. Louis School of Law, 3642 Lindell Boulevard, St. Louis 8, Missouri.

Southwestern Law Journal, Fall 1950. Southern Methodist University School of Law, Dallas, Texas.

Temple Law Quarterly, Summer 1952. Temple University School of Law, 35 South Ninth Street, Philadelphia 7, Pennsylvania.

Tennessee Law Review. April 1953. University of Tennessee, 1505 West Cumberland Avenue, Knoxville, Tennessee.

University of Detroit Law Journal, May 1952. University of Detroit School of Law, 651 East Jefferson Avenue, Detroit, Michigan.

University of Pittsburgh Law Review, Winter 1953. Cathedral of Learning, Room 1401, Fifth Avenue, Pittsburgh 13, Pennsylvania.

Syracuse Law Review, Fall 1950. Syracuse Law College Association, 400 Montgomery Street, Syracuse, New York.

Vanderbilt Law Review, February 1950. Vanderbilt University, School of Law, Nashville 5, Tennessee.

Washington Law Review, University of Washington Law School. Condon Hall, Seattle, Washington.

Prentiss-Hall Labor Course, Prentiss-Hall Inc., 70 Fifth Avenue, New York 11, New York.

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