CRIMINAL CONSPIRACY CASES IN POST-BELLUM PENNSYLVANIA

By Hyman Kuritz

THE labor movement, which was revived during the Civil War, faced a variety of attacks against it in post-bellum America. After a lapse of some twenty years, criminal conspiracy charges once more became an effective weapon against labor.[1] The struggles for the eight hour day led to a concerted offensive against the trade unions by the employers, whose weapons included the black list, the "open shop," private industrial police, and conspiracy indictments. Some of the most bitter and bloody of the struggles took place in the Pennsylvania anthracite regions, and it was here that criminal conspiracy trials played an important rôle.

The judicial basis for criminal conspiracy still rested on the common law which defined a conspiracy as a combination of two or more persons who by concerted actions sought to accomplish a criminal or unlawful purpose, or if not criminal or unlawful, used such means to accomplish their purpose. In several of the early American labor conspiracy trials, the courts, accepting the precedents of English cases, had declared that a combination to raise wages constituted a criminal conspiracy, although most of them also included charges that unlawful means had been used. Indictments against the right of association by labor were usually subordinated to other counts charging the use of coercive means, but throughout most of the ante-bellum period no court defined the legal right of labor to combine for mutual purposes.[2] The right of the trade unions to combine and to strike for higher wages was first clearly established in 1842 when Chief Justice Shaw of the Massachusetts Supreme Court declared that labor combinations

[1] Edwin Witte was able to discover only three between 1842 and 1863. See the *Yale Law Journal,* XXXV (May, 1926), 829.

[2] Francis B. Sayre, "Criminal Conspiracy," in *Harvard Law Review,* XXXV (February, 1922), 414n; Witte, *op. cit.,* 826-828; Richard B. Morris, "Criminal Conspiracy and Early Labor Combinations in New York," *Political Science Quarterly,* LII (March, 1937), 51-85.

were legal and could not be held for criminal conspiracy unless the indictment proved the use of illegal or unlawful means or ends.[3]

Despite the Shaw decision and an act in 1869 making it "lawful for any and all classes of mechanics, journeymen, tradesmen and laborers to form societies and associations for their mutual aid, benefit and protection,[4] unions in Pennsylvania still found themselves in a semi-legal position. To the employers of the state, a strike by a labor organization to get better conditions for their membership, was still a conspiracy,[5] and in this view they were backed by the courts.

In 1869, members of the Workmen's Benevolent Association, the coal miner's union, were indicted for conspiracy when they ordered the union out on strike in Schuylkill county, to force a mining firm to rehire one of their workers. The charge was for maliciously combining to prevent any further work in the colliery, and attempting to dictate to the company the management of the business, as well as the conditions of work. No charge of violence or intimidation was made, but nevertheless, the defendants were found guilty, fined $100, and sentenced to thirty days in jail.[6] That same year the officers of the International Typographical Union were indicted for conspiracy and libel for "endeavoring to dissuade men from working in an unfair office, . . . and publishing a rat circular."[7] In this case, however, the jury returned a verdict of not guilty.[8]

This uncertain state of affairs led to the passage of the act of 1872 which specifically gave a union the right to strike for better wages and conditions without subjecting it to an indictment for criminal conspiracy. It carried a proviso, however, that "any person or persons who shall, in any way, hinder persons who

[3] For a brilliant account of this celebrated case see Walter Nelles, "Commonwealth v. Hunt," *Columbia Law Review,* XXXII (November, 1932), 1128-1169.

[4] Laws of the General Assembly, 1869, P.L. 1260.

[5] Pa. Bur. Ind. Stat., *First Annual Report* (1872-3), 338.

[6] Commonwealth v. Currens, Owens, and Keating, 3 Pittsburgh Reporter 143 (1869).

[7] A "rat circular" was a list of names of scabs circulated by the union in order to keep them out of the shops.

[8] Eighteenth Annual Session of the International Typographical Union, *Proceedings* (Cincinnati, 1870), 12; In another case for the same year, the car drivers of the Hunter's Point Railroad were indicted for conspiracy. Quoted from the *American Workman,* August 7, 1869, in Witte, *op. cit.,* 829n.

desire to labor for their employment, from so doing, or other persons from being employed as laborers," could be prosecuted under the existing laws of the state.[9] It was this clause that soon led to serious troubles for the labor movement.

The first tests of the act of 1872 emphasized its shortcomings. In 1874, a printers' union refused to accept orders upon merchants in lieu of regular wage payments, and went on strike. When the union sent out circulars to other unions asking them to warn printers to stay away, and when a watch was kept on the incoming trains, the owner brought suit against them. In the ensuing trial, the court in its charge to the jury, declared that a strike to demand a certain method of payment was "suspicious of an evil intention, . . . especially if the defendants went to work to prevent the coming of others whom the editor had telegraphed for." This was apparently a violation of the act of 1872. It also declared that the union could not legally regulate prices and skirted the Pennsylvania statute by saying, "Combinations to raise or depress wages or prices are dangerous in their tendencies to unduly excite and cultivate a naturally selfish principle, but while their tendencies may not be direct evidence of guilt they serve to frame the mind for studying the motives of those charged with it."[10]

The most important tests of the act of 1872 occurred in Clearfield county during the coal strike of 1875. The strike had broken out first in the anthracite fields and had spread to Clearfield in April. It had been deliberately provoked by an association of the leading coal operators under the leadership of Franklin B. Gowen, president of the Philadelphia and Reading Railroad Company. The operators were determined to control completely the anthracite region and had decided to use the strike to smash the miner's union. Every weapon at their disposal was used to break the resistance of the workers.[11] Labor spies infested the area, Coal and Iron Police and Vigilante Committees were widely used, active leaders were arrested as allged "Molly Maguires," and re-

[9] Laws of the General Assembly, 1872, P.L. 1175.
[10] Commonwealth v. Berry, *et al.* 10 Scranton Law Times 217 (1874).
[11] Marvin W. Schlegel, *Ruler of the Reading: The Life of Franklin B. Gowen* (Harrisburg, 1947), 62-113; J. Walter Coleman, *The Molly Maguire Riots: Industrial Conflict in the Pennsylvania Coal Region* (Richmond, 1936).

peated attempts were made to bring in workers from other regions, large numbers of whom were Italians.[12]

It was the attempt by the union in Clearfield county to keep out these workers that led to the conspiracy trials of 1875.[13] On May 17, fifty-six miners were arrested at Osceola for interfering with the strikebreakers, and thirty-six were tried and convicted for "misdemeanor, unlawful assembly, riot, and conspiracy." Judge Orvis of the court of Quarter Sessions, reserved the heaviest punishment for the leadership of the union, sentencing John R. Joyce, president; John J. Maloney, secretary, and four others to one year in jail; while the rest received sixty days or a suspended sentence.[14] John Siney, president of the Miners' National Association, and Xingo Parks, field organizer, had been indicted at the same time, but their case had been continued to the September term to allow them to get adequate counsel. Attention shifted quickly to them as the case involved the two most important leaders of the miners and placed a spotlight on the act of 1872.

The operators, determined to win a conviction, retained U. S. Senator William A. Wallace[15] to aid the District Attorney, and mobilized 60 witnesses headed by Captain Thomas E. Clark, chief of the Coal and Iron Police in Clearfield county.[16] The defense countered by bringing in Matthew Carpenter of Wisconsin,[17] in

[12] The use of Italians as scabs was a fairly common practice in this period. In at least one instance it led to the conviction of a coal operator and an Italian agent in Westmoreland county for illegally arming Italians that had been shipped in. See Commonwealth v. Guescetti, 11 Phil. 656 (1875).

[13] The struggles between the coal operators and the miners in Clearfield county had led to an earlier conviction of some miners for conspiracy in 1873. There were undoubtedly others in these stormy years. See the Pa. Board of Pardons, *Pardon Papers,* 1873.

[14] Pa. Bur. Ind. Stat., *Ninth Annual Report* (1880-81), 313-315; *Miners' National Record,* June, 1875, 131; July, 1875, 147; N. Y. *Sun,* September 29, 1875, 1. Xingo Parks, later, was able to get the members of the jury to sign a petition for the release of the men. They expressed the sentiment that they did not believe the men guilty, but felt that they had acted "indiscreetly." *Miners' National Record,* July, 1875, 153.

[15] Wallace was one of the leading members of the Democratic party in Pennsylvania and an attorney for the Pennsylvania Railroad. He had been elected to the U. S. Senate in 1875. *Biographical Directory of the American Congress, 1774-1928* (Washington, 1928), 1661.

[16] New York *Sun,* October 5, 1875, 1; *The Railway World,* October 2, 1875, 640.

[17] Matthew Hale Carpenter had been a Republican Senator from Wisconsin "but had won the enmity of the railroads by securing unfavorable decisions from the courts, and by advocating federal control of interstate commerce." As a result he was defeated for re-election in 1875. *Dictionary of American Biography* (N. Y., 1929), III, 512-513.

addition to a battery of local attorneys. The defense cited the act of 1872, Commonwealth v. Hunt, and Commonwealth v. Carlisle (1821),[18] to prove that both in law and in the courts workers had won the right to combine to raise wages. They claimed further that Siney's opposition to the strike and his known conservative views made it unlikely and improbable that he had advocated violence of any kind.[19] The prosecution, on the other hand, argued that the act of 1872 had not changed the conspiracy laws of the state at all.

Judge Orvis, in his charge to the jury seemed to incline toward this latter view when he said: "You see therefore, that any agreement, combination, or confederation, to increase or depress the prices of any vendible commodity, whether labor, merchandise, or anything else, is indictable as a conspiracy under the laws of Pennsylvania. Each individual has the undoubted right to demand whatever price he pleases for his labor or property, even though it be twice or thrice its market value, but if he enters into a combination with others to compel the employer or purchaser to pay the price thus demanded by destroying competition, the combination becomes an indictable offense." Orvis cited Article VIII of the Constitution of the Miners' National Association which defined the conditions under which the union's executive board extended support to a strike, and inferred that this took away the right of individual action by the miners. The only effect of the act of 1872 on the previous conspiracy laws, he concluded, was to remove the unions from criminal liability if they refused to work for an employer but, he added, "if they go one step further and attempt in any way to hinder or prevent persons who are willing to labor, from so doing, their acts become unlawful and their combination criminal."[20] With this charge as its guide, the jury acquitted Siney, but it found Parks guilty and he was sentenced to one year in the penitentiary.[21]

[18] Commonwealth *ex rel.* Carlisle, Brightly 36 (1821). The courts' decision in this case had anticipated Justice Shaw when it indicated that the legality of a journeyman's association depended upon the means used to gain its ends.

[19] New York *Sun,* October 4, 1875, 1; October 5, 1875, 1.

[20] *The Railway World,* October 16, 1875, 672; N. Y. *Sun,* October 7, 1875, 1; *Miners' National Record,* October, 1875, 195; *Pardon Papers,* 1875.

[21] A powerful drive was launched to free Parks and the others jailed in the first trial. A petition campaign to get 20,000 signatures was begun to be presented to the Board of Pardons scheduled to meet November 9th. The

This decision of Judge Orvis completely undermined the liberating effect of the act of 1872. Theoretically, unions could organize and strike, but the first step they took to persuade others to join in a walkout or to prevent new workers from taking their places, according to his interpretation, made them liable to the charge of criminal conspiracy. Hence for all practicable purposes, the ancient common law still prevailed.

Labor organizations immediately took up cudgels for a change in the law. Already in May of 1875, at the convention of the Industrial Congress[22] which met in Indianapolis, President J. H. Wright, in a powerful address, had told the assembled delegates that:

> You should express your hearty disapproval of the species of class legislation now so much resorted to in 'Conspiracy Laws,' 'Intimidation Acts,' and 'Civil Suit Bills,'[23] whereby the laborer is denied the right to dispose of the only commodity of which he is possessed, upon the best terms he can obtain. These are incompatible with the spirit and genius of our free institutions, and should not disgrace our statute books. Surely our workingmen are no less law-abiding than others, that more stringent laws are needed for them than is deemed just to our criminals.[24]

In Pennsylvania the task before the labor movement was to amend the act of 1872 so that future Orvis decisions would be impossible. "As the statute now stands," declared the *Miners' National Record,* "we have simply the right to combine, and if we wish to strike to increase our wages, or prevent a reduction, we dare not, as a body, try to get others to join us or desist from

campaign ended in success when all of the leaders were pardoned on December 22, 1875. *Pardon Papers,* 1875; National Labor Tribune, October 16, 1875; *Miners' National Record,* January, 1876, 45.

[22] The Industrial Congress had been organized in 1872 by a number of trade unions in an attempt to form a national labor federation. It disintegrated in a very short time and this convention of 1875 was the final one. See John R. Commons, *History of the Labor Movement in the United States* (N. Y., 1918), II, 157-164; Philip S. Foner, *History of the Labor Movement in the United States* (N. Y., 1947), 441.

[23] Most of the state conspiracy trials were based on general statutes which defined conspiracy, but Illinois and Connecticut had statutes on the books directed specifically against labor combinations.

[24] *Miners' National Record,* May, 1875, 115.

working and filling our places."[25] Demands were now raised to put an end to criminal conspiracies against labor entirely, or at least, to limit the definition of "hindering" to the actual use of force and violence.[26]

These suggested safeguards for labor were incorporated in the act of 1876 which modified the "hindering" proviso in the act of 1872 so that "the use of lawful or peaceful means, having for their object a lawful purpose, shall not be regarded as 'in any way hindering' persons who desire to labor, and that the use of force, threat or menace of harm to persons or property, shall alone be regarded as in any way hindering persons who desire to labor for their employers, . . ." The act provided that persons could be prosecuted under Pennsylvania penal laws for violating this section.[27]

Subsequent court interpretations of the act of 1876 so enlarged and expanded the definition of "hindering" that its protection for labor organizations soon proved illusory. The act was sustained in an early court test in 1881, when an indictment against a union of journeymen printers for unlawfully conspiring to injure their employer by "molesting, intimidating and annoying" him, failed to list specific charges of force and violence against the union,[28] but in the conspiracy trials of the 1880's, the employers easily overcame the point by making more specific charges.

One of the most prominent trials took place in 1881, when D. R. Jones, Hugh Anderson, and some fourteen others were arrested for conspiracy at the instance of the Waverly Coal and Coke Company in Westmoreland county. They were charged with inducing the workers to break their contract with the company, and with threatening to bring in a brass band to be used to expose strikebreakers. The company had made a contract with its employes that sixty days notice was to be given in case of disagreement over wages before the issuance of a strike call. Jones had advised the workers to disregard this arrangement. The court in its charge to the jury sustained the counts in the indictment, stat-

[25] *Ibid., October,* 1875, 199.
[26] *Ibid., National Labor Tribune,* October 23, 1875; New York *Sun,* October 9, 1875, 2.
[27] Laws of the General Assembly, 1876, P.L. 45.
[28] Commonwealth *ex rel.* E. Vallette *et al.* V. Sheriff, 15 Phil. 393 (1881).

ing that the use of the threat to use brass bands constituted "a hindrance within the meaning of the act of 1876," and that the advice of Jones to the workers to break their contract with the company, while perhaps not unlawful, nevertheless, had as its aim an unlawful purpose. Therefore, they were guilty of conspiracy.[29]

Thus new means had been discovered to get around the newly-won rights of the labor unions. The definition of intimidation, apparently clearly defined in the act of 1876, was now being stretched to fit the circumstances, and even if no interference with the right to work had occurred, inducing workers to break their contract with an employer was now considered a conspiracy. This new line had been foreshadowed in the *Iron Age,* well-known trade paper of the iron industry. In the circumstances of a strike, an editorial declared:

> No heads may be broken, and no one may have been told that to resist the effort to "entice" him would be perilous; but every one who has been a workman or an employer knows perfectly well that under such circumstances pleasant words often have a terrible significance. The man to whom they are addressed knows that to refuse to listen and to yield will make him an outcast in his class; that he will be socially ostracized, and that even his life would not be safe were he to openly defy the power he would gladly disobey if he dared.[30]

This was the tactic employed in a conspiracy trial in 1882 when Miles McPadden, General Organizer of the Knights of Labor, and twelve others were indicted during a strike in Clearfield county. The charge stated that the very presence of large numbers of workers on strike "intimidated" many into joining the strike, and undue influence was exercised over them by "threats, silent menaces and otherwise." After several months of delay, however, the case was finally dropped.[31] This same charge was

[29] *Iron Age,* March 10, 1881, 11-13; *Legislative Record,* April 19, 1887, 1494.
[30] *Iron Age,* January 6, 1881, 14.
[31] Pa. Bur. Ind. Stat., *Tenth Annual Report* (1881-82), 161-162; Knights of Labor, Fifth Regular Session, *Proceedings* (1881), 283; *Ibid.,* Sixth (1882), 323-324; *Journal of United Labor* (January, 1883), 388. There were two other conspiracy trials in this period involving leaders of the K. of L. One occurred in Somerset county and resulted in an acquittal and the other took place in Western Pennsylvania. See Knights of Labor, *op. cit.,* Fifth 283; *Iron Age,* August 24, 1882, 24.

employed with greater success in a conspiracy charge against the miners in the Monongahela valley in 1885. In this case the state charged that it was a conspiracy for large numbers of workers to gather about a mine if they had any intention of intimidating the workers inside. This line of reasoning was accepted by the jury and convictions resulted. The case was appealed to the Pennsylvania Supreme Court where the attorney for the miners argued that it was unfair to impute to a gathering of strikers, in the absence of any overt acts, an evil intention. "It is as fair to infer," he told the court, "that its effect would be to encourage those working to join the strikers, seeing the large numbers engaged therein, and therefore the greater probability of the strike being successful, as it is to infer such assemblage a threat or menace of harm." But the court sustained the judgment of the lower court.[32]

The continued use of conspiracy indictments against labor, and the emasculation of the act of 1876 by the courts,[33] led to renewed efforts to seek new and improved legislation. Attempts in 1887 were unsuccessful,[34] but finally in 1891, D. R. Jones, elected to the state legislature by the miners, succeeded in placing a new anti-conspiracy law on the statute books. It stated the right of unions to strike for higher wages, etc., "without subjecting them to indictments for conspiracy at common law, or under the criminal laws of this commonwealth." Again a proviso was added that persons could be prosecuted and punished "under any law other than that of conspiracy if force, threats, or menace of harm" were used to prevent others from working.[35]

This stubborn insistence by the state legislatures to add special provisos for the prosecution of labor unions that "unlawfully" interfered with the rights of others to work, continued to circumscribe the strike activities of labor. It enabled employers to harass the unions under the penal laws of the state. Its effect was simply

[32] Newman *et al.* v. The Commonwealth, 34 Pittsburgh Law Journal 313 (1886); 7 Atlantic Reporter 132 (1886).

[33] Witte cites 14 conspiracy indictments in Pennsylvania in the 1880's. See *Yale Law Journal,* XXXV (May, 1926), 830-831; For the infinite variety of definitions of intimidation by the courts see Edwin S. Oakes, *The Law of Organized Labor and Industrial Conflicts* (N. Y., 1927), sec. 320, 435-443.

[34] *Legislative Record,* February 4, 1887, 1517; April 14, 1887, 1397; April 19, 1887, 1494-1495; April 28, 1887, 1689.

[35] Laws of the General Assembly, 1891, P.L. 300.

to subordinate criminal conspiracy indictments to other forms of judicial action against labor. "Unlawful" interference with the right to work was no longer a criminal offense but civil action was still possible. Numerous suits continued to come befort the courts involving the interpretation of the acts of 1872, 1876, and 1891, but most of them took the form of cases in equity and requests for injunctions. The courts, on the whole, severely limited the freedom of action of the unions in these cases. It was to take many more years of bitter struggles before the labor movement was able to secure more adequate protection from the Pennsylvania legislature.