THE LABOR INJUNCTION IN PENNSYLVANIA, 1891-1931

By Hyman Kuritz*

LABOR injunctions were not used extensively by employers in Pennsylvania until 1891, when the coal miners, led by their representatives in the state legislature, finally succeeded in obtaining an anti-conspiracy law which established the right of trade unions to strike for better wages and working conditions "without subjecting them to indictments for conspiracy at common law, or under the criminal laws of this commonwealth." A proviso was added, however, 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.[1] The end of common law conspiracy as an instrument against labor unions persuaded many employers that new methods had to be found to curb their activities.

The provisions of this act well illustrated a typical characteristic of labor legislation enacted by the Pennsylvania state legislature. While such legislation represented a step forward in the protection of labor's rights, modifying amendments invariably crippled these laws and opened the door to circumventing the intent of the acts by employers or to narrow constitutional construction by the courts.

The ultimate fate of such labor legislation accurately reflected the true nature of labor's influence in the state government. Occasionally, the unions were able to send one of their leaders to the state legislature from areas where they were particularly strong, but at no time were they able to match effectively business

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[1] June 16, 1891, P. L. 300. On the use of common law conspiracy against labor in Pennsylvania, see my article, "Criminal Conspiracy Cases in Post-Bellum Pennsylvania," *Pennsylvania History,* XVII (October, 1950), 3-11.

influence on the government. Favorable labor legislation was usually enacted during periods of union growth. Laws passed between 1869 and 1886[2] were largely the result of the rising influence of the Workingmen's Benevolent Association. Similarly, legislation passed in the early 1880's regulating the company stores was due, at least partially, to the strength of the Greenback-Labor party, which called for labor reforms. In fact, the Republican party in 1878 found it necessary to cooperate closely with the Greenback movement in order to stave off defeat at the polls by the Democrats. The anti-conspiracy act of 1891 was first considered after a series of strikes in the Lehigh and Schuylkill coal regions. The miners, generally, played a major role in influencing the legislature to enact favorable labor laws, a tribute to the key importance of this labor force in the state's labor history.

The act of 1891 also reflected the fact that a new era had arrived—an era which rendered criminal conspiracy indictments against labor combinations an anachronism in state-labor relations. Such indictments were more in keeping with an earlier period when mercantilist influences still prevailed, and when labor combinations represented a new and possibly dangerous phenomenon. But in a period when combinations were so common among many groups, and when the corporate system was so widely employed in industry, the use of criminal conspiracy doctrines was an anomaly. Moreover, conspiracy indictments were losing their effectiveness. Conviction for conspiracy depended on a jury, and many of the juries, composed as they were of farmers, small proprietors, or professional people who were fearful of growing corporate power, could not be counted on to secure a conviction. Quite often local juries simply refused to return verdicts of guilty. Frequently, the sentences of the convicted were very light and did not serve as a sufficient deterrent in preventing further labor organization. The Jones conspiracy case of 1881 resulted in a sentence of one day in jail, and in the Clearfield cases of 1884, the fines were only six cents each. Dissatisfaction with this trend was voiced by the *Iron Age* in 1879, and it suggested injunctions as a better means

[2] The acts of 1869, 1872, and 1876 were designed to give unions the legal right to organize and to strike and to protect them against criminal conspiracy indictments. See *Laws of the General Assembly,* 1869, P. L. 1260; 1872, P. L. 1175; 1876, P. L. 45.

to accomplish the same ends.[3] It was to this new weapon that the employers now began to turn.

There were scattered instances of labor injunctions in the antebellum period in American history, but it was not until the 1877 strikes that any significant attention began to be paid to them. They were viewed by associations of employers as a "new and highly efficient instrument," and were employed to some extent in a number of states in the 1880's.[4] There were several labor injunctions in Pennsylvania in this period also,[5] but it was not until the act of 1891, serving as a catalytic agent, that injunctions began to dominate the Pennsylvania labor scene.

An injunction is simply an order issued by a judge enjoining individuals from committing certain acts. To violate the injunction is to risk a fine or imprisonment for contempt of court. An injunction is sought in those situations where civil action will not adequately protect one's property rights and extraordinary measures are allegedly necessary to prevent irreparable damage to the property. Originally, the injunction was served directly to the individuals concerned, but in labor disputes it became binding automatically on all members of a union even though they may not have received notice of the injunction.

In its earliest development, the injunction was simply a device

[3] June 5, 1879, 14, cited in Clarence E. Bonnett, "The Origins of the Labor Injunction," *Southern California Law Review,* V (October, 1931), 123. Criminal conspiracy indictments continued to crop up occasionally after 1891. Indictments against labor combinations were made in the Homestead strike of 1892, in the streetcar and tin plate strikes of 1910, and in the coal strikes of 1902 and 1910. *Pittsburgh Dispatch,* September 2, 1892; James Barnard Hogg, "The Homestead Strike of 1892" (unpublished Ph.D. thesis, University of Chicago, 1944), 125; *National Labor Tribune,* July 3, 1902; June 9, 1910; September 8, 1910; *Pittsburgh Leader,* March 7, 1910, 4; *Report on the Miners Strike in the Bituminous Coal Fields in Westmoreland County, Pennsylvania in 1910 and 1911,* House Misc. Doc. No. 97, 62nd Cong., 2nd Sess. (1912), 19, 129-130, cited hereafter as *Westmoreland Coal Strike; Amalgamated Journal,* XII (November 10, 1910), 12-13. As late as 1931, an organizer for a hosiery union was convicted for criminal conspiracy because he interfered with the "right to work." The court held that he was not protected by the act of 1891 because he was not an employee of the mill concerned. Com. vs. Hoffman, 157 Atlantic 221 (1931).

[4] Bonnett, 123; Edwin E. Witte, "Early American Labor Cases," *Yale Law Journal,* XXXV (May, 1926), 832-833; Felix Frankfurter and Nathan Greene, *The Labor Injunction* (New York, 1930), 21.

[5] *Investigation of Labor Troubles,* Senate Report, 52nd Cong., 2nd Sess. (1892-93), vii-ix; *Connellsville Courier,* April 24, 1891; April 3, 1891; *Nineteenth Annual Report,* Pennsylvania Bureau Industrial Statistics (1891), 6 D.

by means of which a court of equity protected tangible property against "the threat or continuance of an irreparable injury,"[6] but this concept was steadily expanded by the courts in labor cases to justify the issuance of injunctions to guarantee the employer's right to secure labor, to prevent interference with his business, and to protect the community against a public "nuisance."[7]

The emergence of these judicial concepts reflected the increasing importance of combinations in the post-bellum period. They were based firmly on the traditional American regard for individual rights, but in the era of laissez-faire, they tended to give strategic advantages to business combinations over labor combinations. The judicial attitude towards the industrialist was oriented towards his unrestricted right to sell his products in the open market. Labor possessed the equal right to gain unrestricted access to the labor market. If any circumstance arose where the "intent" of either a labor or business combination was to prevent the enjoyment of this legal right by the other, the courts considered such combinations unlawful.

The protection of property rights now came to mean not merely the physical equipment and plant, but non-material things, such as profits, as well.[8] Labor now possessed the legal right to strike, but if it formed a combination whose "intent" was to interfere with these profits, the combination was considered to be unlawful. The practical effect of such a criterion was to place limits on the absolute right of labor unions to organize workers in those situations where a court decided that such bad "intent" or "malice" existed. The employee's right of unrestricted access to the labor market also aided the employer. It meant in practice that the employment of strike-breakers by an employer was lawful, and labor combinations that attempted to interfere with this practice could be restrained by the courts.

The legal protection of property rights had other connotations. Combinations, either of business or labor, whose conduct tended to "restrain trade" and thereby injured the public were deemed un-

[6] Frankfurter and Greene, 47.

[7] Witte, 834. For an early application of the doctrine that a public nuisance can be restrained by an injunction, see Com. v. Rush, *et al.*, 14 Pa. 186 (1850).

[8] For an exposition of this development see Joseph Dorfman, *The Economic Mind in American Civilization, 1865-1918* (New York, 1949), II, 22-23.

lawful. Labor organizations were restrained from "inducing breach of contract," i.e., persuading a worker to join a union and thereby causing him to violate his prior contract made with an employer not to join a labor organization. They were restrained from employing "unlawful means," from using "threats," "coercion," or "intimidation" in order to gain their ends. The judicial meaning of such terms varied according to the interpretation made by the courts. The labor injunction provided the legal framework for the development of these concepts.

Labor injunctions in Pennsylvania contained all of these conceptions in one form or another. A decision in 1888 helped to point the way by declaring that the "intent" of the acts of 1872 and 1876 merely relieved persons from criminal liability if they "hindered" others from working, but such interference with the right to work was still unlawful, although not criminal. Hence a court could protect this right by issuing an injunction.[9]

Enlarged property concepts were very clearly stated by a Pennsylvania court which had issued an injunction to protect the "right to work." It justified its position on the ground that the right of property "does not mean simply property which can be handled and technically trespassed upon. . . . Without touching the property of plaintiffs, defendants may commit acts which constitute a nuisance and infringe upon rights of property. In trespass there is a direct infringement of one's property—in nuisance it is consequential. In either case equity will afford relief by injunction, if the injury be such as is not susceptible of adequate pecuniary compensation in damages, or one the continuance of which would be a constantly recurring grievance."[10]

Such property concepts were utilized to prohibit boycotts against a business in 1888. Eleven women had been fired by a laundry in Allegheny County, and the Knights of Labor launched a boycott against the company, urging its customers by means of circulars and other measures to stop doing business with the concern. The court decided that even the use of the word "boycott" was illegal, and constituted an unlawful act. The decision also made it clear

[9] Brace Brothers v. Joseph L. Evans, *et al.*, 35 Pittsburgh Legal Journal 399 (1888).

[10] McCandless and Kinser v. O'Brien *et al.*, 38 Pittsburgh Legal Journal 435 (1891); see also York Mfg. Company v. Oberdick *et al.*, 15 York 29 (1901).

that union leaders who were not employed by the company were outside the protection of state labor legislation, since these acts covered only the direct relations between the employer and the employed.[11] This case became the cornerstone for similar cases in later years, extending the definition of boycott to prohibit a union from preventing a printing company from employing non-union workers,[12] enjoining a building trades union from ordering its members not to work for any contractor who bought materials from a particular company.[13] In 1901, the United Association of Journeymen Plumbers of Philadelphia was enjoined from attempting to force non-union plumbers off jobs by refusing to allow union plumbers to work at their side. An agreement had been made with the contractors that only union men would be employed, but this agreement was disallowed by the court as a violation of the "indefeasible right of labor to acquire property."[14] This decision furnished the main precedent for a case in 1914 which assessed damages against a union because it had forced the dismissal of a foreman disliked by the employees under his charge. The court declared that this was a conspiracy to deprive him of his position.[15]

Even the announcement by a building trades union that it would not work on any project that used materials made by non-union workers was prohibited by a sweeping injunction in 1906 as an unlawful interference with the property rights of the employer. The mere fact that a union of 7,000 workers made this announcement constituted a "restraint of the mind," and exercised compulsion against contractors not to do business with any company so boycotted by the union. Hence it constituted a conspiracy and could be enjoined by an injunction.[16] The sense of these decisions

[11] Brace Brothers v. Evans *et al.*, 35 Pittsburgh Legal Journal 399 (1888). A number of court decisions in other states deciding similar cases in the same vein helped to give credence to this interpretation. The United States Supreme Court banned the secondary boycott in the famous case of Loewe v. Lawlor, 208 U. S. 274 (1908).

[12] Murdock v. Walker, 152 Pa. 595 (1893); see also Long *et al.*, v. Bricklayers and Masons International Union No. 30, *et al.*, 14 Luzerne Register Reports 37 (1906).

[13] Patterson and Co. v. The Building Trades Council of Wilkes-Barre and Vicinity *et al.*, 11 Kulp 15 (1902).

[14] Erdmann *et al.*, v. Mitchell *et al.*, 7 Lackawanna Legal News 343 (1901), affirmed in 207 Pa. 79 (1903).

[15] Bausbach, Appellant v. Reiff, *et al.*, 244 Pa. 559 (1914).

[16] Purvis v. United Brotherhood of Carpenters, 214 Pa. 348 (1906); see also Moore *et al.*, v. Whitty *et al.*, 149 Atlantic 93 (1931).

was applied to enjoin a glass workers union from persuading apprentices to join the union after they had pledged to the employer that they would not join any labor organization.[17]

Thus the courts established the doctrine that the acts of 1872, 1876, and 1891 did not prevent civil action from being taken against labor organizations which "interfered" with the right to work. Employers were able to secure injunction after injunction which circumscribed many forms of strike actions by the unions. The courts declared that it was unlawful to picket en masse, to follow workers about, to hurl epithets, or to gather at boarding houses where workers lived. They kept unions from detaining or annoying workers on the street or highway, from gathering around railroad stations where other workers were being brought in, from "enticing or soliciting" employees, and from doing anything that might be construed as an interference with the right to work.[18]

This trend became particularly pronounced after 1897, as a result of the experiences in the bituminous coal strike of that year. In 1895 the New York Gas and Coal Company had secured a temporary injunction enjoining the miners from assembling near its mines and from intimidating those who continued to work.[19] When the strike of 1897 broke out, it sought to make this injunction permanent. A lower court refused on the ground that the union could not be held responsible for the unlawful acts of certain individuals. It maintained that the strikers had been careful to stay within legal limits, and refused to conclude that the mere gathering of crowds was unlawful.[20] Justice Mitchell of the state Supreme Court, however, in a unanimous decision, reversed the lower court. He resurrected the concept of "restraint of mind" used in the

[17] Flaccus v. Smith *et al.*, 47 Pittsburgh Legal Journal 129 (1899), affirmed in 199 Pa. 128 (1901); see also York Mfg. Co. v. Oberdick *et al.*, 15 York 29 (1901).

[18] *Pittsburgh Dispatch*, December 8, 1893, 8; Wick China Company, Appellant v. W. K. Brown, *et al.*, 164 Pa. 449 (1894); State Line and Sullivan Railroad Company v. Brown, *et al.*, 11 Pa. District 509 (1902); Nolde and Horst Company v. Kruger, *et al.*, 7 Berks County Law Journal 179 (1914); Reading Hardware Company v. Adams, *et al.*, 8 Berks 283 (1916); The W. B. Ry. Co. v. The A. A. of St. Ry. Emp., *et al.*, 18 Luzerne Legal Register Reporter 389 (1916).

[19] *Pittsburgh Leader*, August 8, 1897, 5. A number of injunctions were also secured by the coal operators in the federal courts, but these are not considered in this study.

[20] O'Neill v. Behanna, 182 Pa. at 237, 238-239 (1897).

older criminal conspiracy cases, sternly informing the strikers that physical violence was not the only type of violence possible. "The 'arguments,' and 'persuasion' and 'appeals' of a hostile and demonstrative mob," he argued, "have a potency over men of ordinary nerve which far exceeds the limits of lawfulness." But going even further, Mitchell went on to state that, even if the persuasion had been confined to lawful limits, attempting to talk to the miners going to and coming from work constituted an unlawful action as it was "exerted at an improper time," and therefore interfered with the plaintiff's rights.[21]

When camps were established by the miners during the course of the strike of 1897, DeArmit, the president of the New York and Cleveland Gas and Coal Company, threatened to use this injunction to force them to dissolve these camps.[22]

This company, as well as a number of others involved in the strike, now secured even more sweeping injunctions enjoining the miners from "assembling, marching, or camping in proximity of said mines and the houses of the miners" employed by the companies, or from interfering with them in any "unlawful" manner.[23] "Unlawful" interference consisted of "any word or deed that amounts to a threat or that intimidates, or any violence that endangers the peace of the community or the safety of individuals, if used to prevent one from prosecuting his business or working when he so desires."[24] Proclamations by the sheriff prohibiting marching on the highways supplemented these injunctions, but the strikers openly defied these orders, despite threats that they would be cited for contempt. They also attempted to evade these restrictions by walking casually along the highway two at a time at intervals of about one hundred feet. Occasionally, they slipped through the cordon of deputies lined up to prevent any contact with the working miners.[25] Another tactic employed was to have the wives of the miners march on the highways in place of the

[21] *Ibid.*, at 243-246.

[22] *Pittsburgh Commercial Gazette,* August 4, 1897, 1; Wilkes-Barre *Weekly Union Leader,* August 6, 1897, 5.

[23] *Pittsburgh Leader,* August 10, 1897, 1; August 12, 1897, 1; August 20, 1897, 1; Wilkes-Barre *Record of the Times,* July 28, 1897, 1; July 26, 1897, 2; July 27, 1897, 1; *Pittsburgh Commercial Gazette,* August 21, 1897, 2.

[24] Cook and Sons v. Dolan, *et al.,* 45 Pittsburgh Legal Journal 24 (1897).

[25] Wilkes-Barre *Record of the Times,* August 13, 1897, 1; August 20, 1897, 1.

men, but this ended when the injunctions were read to them, and they were included under the ban.[26] Attempts were also made to fill the boarding houses with strikers so that the imported workers could not occupy them.

DeArmit failed in his first attempt to have some of the union leaders cited for contempt when the court pointed out that those cited had not been named in the original bill, but a permanent injunction was issued. It stated that the miners could retain their camps; but, following the O'Neill decision, it prohibited the miners from marching on the highways during the morning or evening hours in order to meet the workers going to or coming from work.[27] The effect of this injunction was to lock up the striking miners in their camps, and to reduce the effectiveness of their marching campaigns. DeArmit followed up his victory by urging the sheriff to close the camps altogether, and launched a back-to-work movement.[28] A number of attachments were also secured, citing individual mine union leaders for contempt when they violated the terms of the injunction.

The 1897 strike really opened up the era of the "blanket injunction," and foreshadowed the more extended use of this instrument to restrict freedom of assembly and the free use of the streets and highways by labor organizations. Moreover, the injunctions were generally so phrased that any person, whether actually named or not in the bill, was placed under their proscription. Vaguely worded, they usually listed a number of the leaders and then appended the catchall phrase that "all other persons are hereby restrained and enjoined and commanded absolutely to desist and refrain from, in any way or manner, interfering with the employees of the plaintiff," or future employees, "by the use or way of threats, intimidation, personal violence, opprobrious epithets or ridicule, or other means, calculated or intended to prevent" them from entering employment or inducing them to leave.[29]

[26] *Ibid.*, August 14, 1897, 1.
[27] *Pittsburgh Commercial Gazette*, August 17, 1897, 1.
[28] *Ibid.*, August 20, 1897, 2; Wilkes-Barre *Record of the Times*, August 19, 1897, 1; *Pittsburgh Leader*, August 20, 1897, 1.
[29] Joseph G. Beale v. William Little, *et al.*, 2 Blair 309 (1902); The Marietta Casting Company v. Hiestand Thuma, *et al.*, 20 Lancaster 185 (1903); Titusville Iron Company v. Quinn, *et al.*, 13 Pa. District 416 (1903); Long, *et al.*, v. Bricklayers and Masons International Union No. 30, *et al.*, 14 Luzerne Legal Register Reports 37 (1906); Purvis v. United

The vagueness of the language in these injunctions, which acknowledged the right of unions to organize and to persuade others to join with them, and yet placed such formidable barriers in the way of any effective action, produced contradictory decisions by the courts. For example, the Pennsylvania courts never outlawed picketing as such, but the restraints around its use were so sweeping that labor found itself continuously in trouble with the courts on this issue. Occasionally, a court, basing itself on this abstract right of labor to picket, seemed to go against the dominant trend. In 1905 a common pleas court in Tioga County refused to issue a blanket injunction simply because there had been some violence. The use of large numbers of strikers, if not accompanied by violence, constituted peaceful persuasion, this court declared, and even offering money to men to leave the mines did not constitute any interference with the right to work.[30] Generally, however, along with the acknowledgment that unions could picket and peacefuliy persuade others to quit work, the courts set up barriers that prevented this in fact. Judge Porter, in the American Sheet and Tinplate Company strike in New Castle in 1909, allowed peaceful picketing, yet his injunction was so sweeping as to make it almost impossible.[31] Other state court injunctions enjoined mass picketing altogether, and still others limited it to a minimal number.[32]

In the mine areas the legal restrictions, which had enjoined marching in the "proximity" of the mines in the 1897 strike, proved insufficient in the coal strikes of Westmoreland and Fayette counties, and did not prevent the miners from holding demonstrations on the highways. The Keystone Coal and Coke Company petitioned the court of common pleas in April, 1910, for a sweep-

Brotherhood of Carpenters, 214 Pa. 348 (1906). For unreported cases indicating this same trend see: *Pittsburgh Leader,* July 30, 1901, 1; *National Labor Tribune,* March 26, 1903; April 13, 1905; *Anti-Injunction Bill H. R. 80,* Hearings before House Judiciary Committee (Washington, 1904), 60-61; *A Compilation of Documents Relating to Injunctions in Conspiracy Cases,* Senate Doc., 57th Cong., 1st Sess. (1908), 33-34.

[30] Morris Run Coal Company v. Guy, *et al.,* 30 Pa. C. C. 642 (1905).

[31] *Amalgamated Journal,* XI (October 7, 1909), 13; October 14, 1909, 1, 12; *New Castle Herald,* October 6, 1909, 1; *Solidarity,* April 16, 1910, 1.

[32] American Engineering Company v. International Moulders Union of North America, 25 Pa. District 564 (1916). Wives of striking miners were banned from picketing in Somerset County on the ground that they did not work in the mines and were not members of the UMW. Consolidation Coal Company v. Brophy, President, 2 *Somerset Legal Journal* 29 (1923).

ing injunction to enjoin the miners from marching on the highways past the mines, from gathering in crowds, or from intimidating in any way the working miners. A preliminary injunction was granted enjoining and restraining the miners:

> from conducting or engaging in marches to the mines, property, and works of the Keystone Coal and Coke Company, and from assembling at and near the works of the said company for the purpose of holding meetings at such places at any time, and from assembling on the highways at such places at any time, and from assembling on the highways at any place or places where the employees of the said company ordinarily pass to and from their work, and from preventing the said employees from going peacefully along said highways, and also from attempting by noise, intimidation, threats, personal violence, or by any other means to interfere with the employees of said company in their desire to labor, or with any of the property of the said company until the further order of this court.[33]

In addition to this injunction, which was made permanent the following month,[34] a number of other injunctions were secured by the other coal companies involved in the dispute.[35] The sense of these injunctions went beyond the decision of Justice Mitchell in the O'Neill case, in which he had enjoined striking miners from marching on the highway only at those times when workers were on their way to or from work. Further, the clause "at or near the works of said company," while no clearer than the word "proximity," was applied by the courts in a new and more extensive way in this strike. Miners' camps that were a half a mile from a colliery were considered as being "near" the mine and ordered dissolved. Miners who marched past a mine on the public highway in order to get to their camps were cited for contempt, and fined fifty dollars each for violating the injunctions.[36] The

[33] *Westmoreland Coal Strike,* 64-66.

[34] The permanent injunction modified the wording so that the miners were enjoined from marching "to" the mines, but were allowed to march "past" company property while walking on a public highway. This fine distinction was not indicated in the other injunctions. See the *National Labor Tribune,* May 12, 1910.

[35] *Westmoreland Coal Strike,* 60-61, 70-71, 74, 77; Westmoreland Coal Company v. McCartney *et al.,* 20 Pa. District 58 (1910); *National Labor Tribune,* August 11, 1910.

[36] *Westmoreland Coal Strike,* 61, 71.

sheriffs of the two counties issued proclamations forbidding marches on highways "near" the mines, and enforced them by means of roving groups of deputies and state police.[37] Attachments for contempt of court were obtained by the coal companies for alleged violation of the injunctions and dozens of union leaders and miners were brought before the courts.[38] Toward the end of the strike when Sheriff Shields of Westmoreland County became embroiled with the coal companies over compensation to his deputies,[39] he issued a proclamation that the disorder had been caused over differing interpretations of the court injunctions, and he ordered those under his authority not to interfere with peaceful marches on the public highways, but to leave it to the companies to complain to the court if they believed that injunctions were being violated.[40]

The pattern of court injunctions in the strike of 1910-1911 was not only applied in later strikes in the coal areas,[41] but was extended even further. An even more comprehensive definition of "near," "to," or the "vicinity" of a mine was furnished by Judge Berkey of Somerset County in an injunction issued in 1922. Judge Berkey stated that "vicinity" "is defined, with relation to the premises upon which mine owners' operating buildings and miners' dwellings are located." Any meeting held, he added:

> so near the premises of complaint that persons being about their usual business or occupations at the mines, tipple, shops, or at the miners' dwellings, or being then in their usual and ordinary pursuits of labor, or rest, can hear the conversations, discussions or orations, so as to understand or gather conclusions, [was within the "vicinity" and violative of the injunction. Or] even if the voices are unintelligible, if the meeting is held in close proximity to the mines and houses so that in the congregation, persons, flags, signs, and insignia can be

[37] *Ibid.*, 63-64, 100, 102.

[38] *Ibid.*, 70, 77; *Amalgamated Journal,* XI (February ??, 1910), 1; *National Labor Tribune,* May 25, 1911.

[39] He had entered into a private contract with twenty-two coal companies, and agreed to furnish deputies under certain stipulated conditions. The companies accused the sheriff of charging exorbitant fees. *Westmoreland Coal Strike,* 98, 112-113.

[40] *Ibid.*, 103.

[41] See for example, Knickerbocker Smokeless Coal Company v. Local Union, UMW, *et al.*, 1 *Somerset Legal Journal* 54 (1917).

> identified, recognized and intelligently observed, such gathering is a violation of the injunction.[42]

It was no wonder that so many strikers were cited for contempt of court for violating injunctions such as these. This power, incidentally, added immeasurably to the already great power of the courts to stifle the activities of the labor unions. It gave a court of equity the jurisdiction of a criminal court and empowered it to fine or imprison any person who had no recourse to a jury.[43] In the context of the times, a worker or a labor leader, accused of violating an injunction and called before the same judge who had issued it, had little chance of escaping punishment.

In view of the courts' protection of the "right to work" and the contractual bond between employer and employee, it is interesting to contrast this procedure with the judicial attitude toward employers or employer associations, accused of coercing other employers, or of coercing labor. As the unions became stronger and enlarged the scope of their activities, in some industries associations of employers collaborated more closely to defend their interests against labor. Any employer who refused to cooperate was placed under pressure, and found it more difficult to do business. In one such case, a building contractor brought suit against a Planing Mill Association in Allegheny County, accusing it of conspiring to refuse to sell him building materials because he had gone along with the demands of the local union for an eight hour day. The association had sent out a circular to all the lumber dealers, asking them to fight the union by refusing to send lumber into the affected region, except to "legitimate planing mills or lumber dealers." Dealers who continued to send lumber to their contractor were told to desist or the members of the association would stop buying lumber from them. In other words, those who refused to go along with the association were to be placed under a ban.

The lower court awarded the contractor $1,500 damages, but the state Supreme Court reversed the decision in favor of the as-

[42] *Somerset Herald,* June 7, 1922, 1; *New York Call,* June 8, 1922, 1. The injunction was first issued in April, 1922; *New York Call,* April 20, 1922, 5.

[43] Cook v. Dolan, 6 Pa. District 578 (1897); Paterson v. Wyoming District Council, Appellant, 31 Pa. Super. 112 (1906).

sociation. Falling back on the "malice" doctrine, Judge Dean concluded that the association did not intend injury either to the plaintiff or to the public. It did not combine to depress wages, but to prevent their increase. "The element of an unlawful combination to restrain trade because of greed or profit to themselves, or of malice toward plaintiff or others is lacking, and this is the essential element on which are founded all decisions as to common law conspiracy in this class of cases. And, however unchanged may be the law as to combinations of employers to interfere with wages, where such combinations take the initiative, they certainly do not depress a market price when they combine to resist a combination to artificially advance prices." The circulars sent out informing lumber dealers that the members of the association would refuse to buy lumber from any dealer who continued to sell lumber to the plaintiff were not a threat since they did not interfere with the dealer's free choice.[44]

Both the ironclad oath and the blacklisting of workers, a recurrent cause of complaint in Pennsylvania labor struggles, were sanctioned by the courts as a necessary protection of property rights. In the 1880's the blacklisting of workers became a particularly sharp problem in the textile industry of Philadelphia, where repeated attempts to organize led to retaliatory measures by the employers.[45] It led to an attempt by labor to push through an anti-blacklisting bill in the legislature of 1887, coupled with some additional safeguards to prevent the firing of a worker without notice. Two different versions of a bill were passed by the two houses of the legislature, but in the final version the "blacklisting" section was dropped.[46] A law was finally passed in 1897 which outlawed ironclad oaths and forbade any corporation in the state from firing any worker because he belonged to a union or was involved in an attempt to form one.[47]

[44] Cote v. Murphy *et al.*, Appellants, 159 Pa. at 421-422, 424, 431 (1894). For similar cases see Buchanan v. Kerr *et al.*, Appellants, 159 Pa. 433 (1894); Buchanan v. Barnes *et al.*, 33 W N C 428 (1894).

[45] *Report on the Bill to Limit the Meaning of the Word "Conspiracy"* (Washington, 1900); *Legislative Record* (January 25, 1887), 101; Bradley, Appellant v. Pierson *et al.*, 149 Pa. 502 (1892).

[46] *Legislative Record* (March 1, 1887), 486-487; May 18, 1887, 2692.

[47] June 4, 1897, P. L. 116. By the early 'twenties, twenty-five states had prohibited blacklisting by statute, but these laws were generally ineffective. See Edwin Witte, *The Government in Labor Disputes* (New York, 1932), 213-215.

Court decisions, however, declared the law unconstitutional and thereby permitted this practice to continue. In 1900 the Pennsylvania Superior Court sustained a county court in declaring that the act of 1897 was a special form of legislation affecting only corporations and excepting other forms of property ownership. This was in violation of Article III, section 7 of the state constitution, and therefore unconstitutional. The court went on, however, to discuss a broader principle of constitutional law as an *obiter dictum*: *viz.,* the relation between freedom of contract and the right of an employer to coerce labor. Judge Rice expressed the fear that if this extension of the police power of the state was sustained, then the legislature could restrict the right of an employee to quit work, or extend the restrictions to the right of an employer to hire and fire along many other lines. Freedom of contract, he implied, was a greater right than the right of labor to form unions for their mutual protection, and interference with it by the state was "an infringement of the liberty guaranteed to one as well as the other by the constitution."[48] Hence the courts continued to maintain the right of employers to enforce ironclad oaths or "yellow-dog" contracts as they now came to be called.[49]

Sweeping injunctions to protect property rights and the freedom of contract continued to be a major factor in labor disputes after the First World War, particularly in the coal areas. The writer has uncovered twenty-six injunctions issued in various parts of the state between 1917 and 1922, which virtually banned picketing, and severely restricted freedom of speech and assembly.[50] The flood tide of injunctions continued during the 'twenties, with numerous injunctions issued in the 1925 and 1927 strikes which

[48] Com. v. Clark, 14 Pa. Super, 435 (1900); Jasper Yeates Brinton, comp., *Labor Laws of Pennsylvania* (Harrisburg, 1914), 314-315.

[49] Flaccus v. Smith *et al.,* 199 Pa. 128 (1901); Rupert Sargent Holland, "The Right of an Employee Against Employers' Blacklists," *The American Law Register,* 42 (December, 1903), 803-809. The term "yellow-dog" was popularized following the United States Supreme Court decision in Hitchman Coal and Coke Co. v. Mitchell, 245 U. S. 229 (1917). The term was applied to various forms of the open-shop contract. See Witte, *The Government in Labor Disputes,* 220-221.

[50] *Amalgamated Journal,* XX (June 26, 1919), 1; *National Labor Tribune,* October 14, 1920; American Civil Liberties Union Cases, *Clippings,* 1921/22, vols. 193, 203, 223; Wilkes-Barre *Record,* April 29, 1922, 2; *Somerset Herald,* April 26, 1922, 1; *New York Call,* August 2, 1922, 3; *Conditions in the Coal Fields of Pennsylvania, West Virginia, and Ohio,* Senate Report. 70th Cong., 1st Sess. (1928), 80-88.

not only prohibited walking on highways or interfering in any way with the right to work, but continued to protect the "yellow-dog" contracts.[51]

This phalanx of injunctions finally came to an end in the 1930's. In Pennsylvania a statute of 1931 limited the power of a court of equity to issue an injunction in a labor dispute,[52] and in 1937 an anti-injunction law modeled after the federal Norris-LaGuardia Act of 1932 was passed, which together with the State Labor Relations Act of the same year, heralded a new attitude towards labor.[53]

The ascendancy of the organized labor movement during the 'thirties and the favorable climate created by the New Deal placed many employers on the defensive, and virtually eliminated the injunction as a factor in labor disputes. Since 1947, however, the enactment of the federal Taft-Hartley law has struck a new balance between the employers and the unions. Injunctions have once more become important in labor disputes, but the legal position of the trade unions has been much more carefully defined. Before the New Deal era the injunction was an instrument so loosely and vaguely worded that it actually placed unions in a semi-legal position, and it made it difficult for them to become viable organizations. The New Deal represents a watershed in American history in that it brought to an end the laissez-faire concepts of unrestricted right of access to markets by the various components of our economy. The "mixed society" wherein government plays an important role in the regulation of the economy has fundamentally altered the balance. It is now more difficult for courts or legislatures to favor unilaterally one side or the other.[54]

[51] *United Mine Workers Journal,* XXXVI (June 1, 1925), 10; *Conditions in the Coal Fields,* 265-270, 271-272, 274-278, 280-281; Jefferson and Indiana Coal Company v. Marks *et al.,* 287 Pa. 171 (1926); Kraemer Hosiery Company *et al.,* v. American Federation of Full Fashioned Hosiery Workers *et al.,* 305 Pa. 206 (1931).

[52] June 23, 1931, P. L. 926.

[53] June 2, 1937, P. L. 1198; June 1, 1937, P. L. 293.

[54] See Robert D. Hanson, "Labor Injunction in Pennsylvania. Its Background and Present Status," *Dickinson Law Review,* XLV (May 1941), 313-319.