

# Federal Labor Laws

Paul K. Rainsberger, Director  
University of Missouri – Labor Education Program  
Revised, February 2004

## XXVI. Illegal or Unprotected Strikes and Pickets

### A. General Considerations

1. Despite its statutory recognition of the right to strike, Taft-Hartley includes many provisions which make specific forms of concerted pressure unlawful. This outline identifies broad types of concerted activity which are either illegal or unprotected under the Act. Subsequent outlines focus on specific prohibitions against the use of concerted activity incorporated into § 8 of the Act.
2. As they have developed, the restrictions imposed on strikes and picketing by Taft-Hartley closely parallel the logic of the nineteenth century illegal purposes doctrine of *Commonwealth v. Hunt*.<sup>1</sup> Concerted activity may be unlawful either because of the tactics used or because of the objectives sought by the union.
3. The effect of having a tactic or goal declared unlawful differs according to the issue involved. In distinct cases, each of the following remedies may be available to an employer confronted with economic pressure deemed unlawful or unprotected:
  - a. Injunctive relief may be available despite the restrictions on the use of injunctions incorporated in the Norris-LaGuardia Act,
  - b. Monetary damages may be recoverable from a union which causes unlawful economic harm to the employer,
  - c. Criminal sanctions may be imposed against individuals and unions engaged in specific types of misconduct,
  - d. Unfair labor practice charges may be filed against a union in many strike or picket cases,
  - e. Disciplinary action may be imposed against individuals who lose their protected status under § 7 because of serious strike or picket misconduct.

---

<sup>1</sup> Commonwealth v. Hunt, 445 Mass. (4 Met.) 111, 38 Am. Dec. 346 (1842).

## B. Strikes to Achieve Unlawful Goals

1. Some strikes are unlawful because of the improper goals or objectives of the strike. For example, strikes to obtain permissive or illegal subjects of bargaining are unlawful. Similarly, strikes directed against neutral employer to apply secondary pressure on another employer are unlawful, and political strikes to achieve goals outside the labor management relationship are probably unprotected.
2. A union which is engaged in a strike for unprotected or illegal goals faces a number of sanctions.
  - a. While the Norris-LaGuardia Anti-Injunction Act attempted to limit the use of injunctions in labor disputes,<sup>2</sup> Taft-Hartley gives back to the NLRB the power to seek injunctions in cases involving union unfair labor practices.<sup>3</sup> The Board may be able to get injunctive relief which would not be available to the employer.
  - b. A judicially enforceable cease and desist order as a remedy for an unfair labor practice has the effect of an injunction if the unfair labor practice is an illegal strike.
  - c. The Board is required to seek injunctive relief against most forms of secondary pressure, including illegal secondary strikes, under §10(l):

Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraphs (4)(A), (B), or (C) of section 8(b), or section 8(e) or section 8(b)(7) . . . he shall, on behalf of the Board, petition any district court of the United States . . . for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter . . . .
  - d. The employer may be able to sue the union for damages resulting from an illegal strike under §303 of Taft-Hartley.<sup>4</sup>
  - e. Politically motivated strikes are beyond the injunctive power of the courts. However, the union may be liable for damages, and participating workers may lose their protected status.

---

<sup>2</sup> 47 Stat 70 (1932), 29 USC §101.

<sup>3</sup> Generally, the Board will utilize §10(l) injunctions when seeking to halt illegal union strike activity, but for those activities not covered by §10(l), a §10(j) injunction will be used.

<sup>4</sup> See e.g., Publishers Paper Co. v. Paper Workers, 124 LRRM 2855 (1987).

### C. Unprotected Strike Tactics

1. The Board and courts have ruled that a number of specific tactics are unlawful, even if the objective of the strike is legal. Among illegal or unprotected strike tactics are the sitdown strike,<sup>5</sup> quickie or intermittent strikes,<sup>6</sup> slowdowns,<sup>7</sup> and other partial strike tactics.<sup>8</sup>
  - a. However, in-plant work stoppages that are peaceful, are focused on specific job-related complaints, and cause little disruption of production by other employees may be protected if the workers continue their protest for a reasonable period of time.<sup>9</sup>
  - b. The fact that workers strike the same employer more than once is not sufficient to show that the workers are engaged in an intermittent strike. Unprotected intermittent strikes are those in which the union is pursuing a strategy of harassing the company through hit and run strike tactics.<sup>10</sup>
2. Workers who engage in unprotected activity lose their rights under § 7 and may be disciplined by the employer.<sup>11</sup>
3. A union which sanctions an unlawful strike tactic may be liable for damages resulting from the tactic.<sup>12</sup>
4. While the employer could not seek an injunction against a strike because of the tactics use, it may be able to obtain an injunction against the use of specific tactics.

---

<sup>5</sup> NLRB v. Fansteel Metallurgical Corp., 306 U.S. 249, 4 LRRM 515 (1939).

<sup>6</sup> See e.g., Pacific Telephone & Telegraph Co., 107 NLRB 1547, 33 LRRM 1041 (1954). But, if strikes are brief, one-time instances of relative short duration, they are presumptively protected, e.g., Downslope Industries, 246 NLRB 948, 103 LRRM 1041 (1979).

<sup>7</sup> E.g., Blades Manufacturing Corp., 344 F.2d 998, 59 LRRM 2210 (8<sup>th</sup> Cir. 1965).

<sup>8</sup> See, e.g., Raleigh Water Heater Manufacturing Co., 136 NLRB 76, 49 LRRM 1708 (1962), Elk Lumber Co., 91 NLRB 333, 26 LRRM 1493 (1950).

<sup>9</sup> Cambro Mfg. Co., 312 NLRB 634, 144 LRRM 1169 (1993).

<sup>10</sup> Westpac Electric, Inc., 321 NLRB 1322, 154 LRRM 1100 (1996).

<sup>11</sup> Pacific Telephone and Telegraph Co., at notes 6, and Elk Lumber Co., at note 8.

<sup>12</sup> E.g., Security Farms v. Teamsters Local 156, 124 F.3d 999, 156 LRRM 2148 (9<sup>th</sup> Cir. 1997).

## **D. Illegal Goals and Tactics of Picketing**

1. Much of § 8 limits the right of unions to apply pressure through the use of pickets. Among the illegal goals of picketing are:
  - a. Applying secondary pressure against neutral employers,
  - b. Seeking recognition of the union, except when specific procedures are followed, and
  - c. Enforcing secondary consumer boycotts of neutral businesses.
2. As with unlawful strikes, the Board is required to seek injunctive relief against picketing for goals outlawed by §§ 8(b)(4) and 8(b)(7).
3. Section 602 of the Landrum-Griffin Act outlaws extortionate picketing, with a potential criminal sanction of twenty years imprisonment and fines of up to \$10,000.<sup>13</sup>
4. Even if a union has the right to picket, improper or coercive tactics may still be unlawful or unprotected, such as mass picketing which blocks entrances, violence or coercion of strikebreakers.
  - a. Workers engaged in unprotected picket line misconduct may lose their protected status under § 7 and be subject to discipline.
  - b. Workers engaged in serious picket line misconduct may lose reinstatement rights at the conclusion of the strike.
  - c. A union may violate § (8)(b)(1)(A) if it restrains or coerces persons crossing a picket line.
  - d. An employer may obtain injunctive relief limiting the pickets and banning the use of improper tactics.
  - e. State criminal actions may be brought against individuals who engage in activities which amount to criminal misconduct.

## **E. Wildcat Strikes**

1. Wildcat strikes, or strikes by union members in violation of a contractual no-strike agreement, are subject of specific restrictions.
2. Individuals who participate in wildcats are engaged in unprotected activity and may be subject to employer discipline.
  - a. Discipline imposed against wildcat strikers must be nondiscriminatory. The employer may, however, single out

---

<sup>13</sup> 29 USCA § 522.

instigators for harsher discipline than is imposed against other participants.

- b. Union stewards and officers may not be given harsher discipline than other wildcat strikers, unless:
  - 1) The contract gives the union specific affirmative obligations to attempt to prevent or end wildcats,
  - 2) The union authorized or ratified the wildcat, or
  - 3) The officer or steward instigated the strike.<sup>14</sup>
3. An employer may seek an injunction against a wildcat strike, but an injunction will be issued only if the employer is willing to arbitrate the underlying dispute.<sup>15</sup>
  - a. *Boys Market* injunctions are a judicially created exception to the Norris-LaGuardia Act.
  - b. In the *Boys Market* case, the Supreme Court recognized the arbitration clause as a "quid pro quo" for the right to strike. In other words, the right to strike is waived in exchange for arbitration as an alternative method for the resolution of contract disputes.
  - c. The courts may enjoin a strike over an arbitrable issue even in the absence of a no-strike clause, if the employer is willing to arbitrate. The effect of this ruling is that the courts may imply the existence of a no-strike clause.<sup>16</sup>
  - d. Even though the courts may infer the existence of a no-strike clause from the presence of an arbitration clause, they will not infer a duty to arbitrate from the existence of a no-strike clause.
4. A union is liable for damages resulting from a wildcat only if it authorizes or ratifies the strike or if it fails to fulfill a contractual obligation to take affirmative action to end an unauthorized strike. Individuals are not liable for damages resulting from a wildcat.

---

<sup>14</sup> Metropolitan Edison Co. v. NLRB, 460 U.S. 693, 112 LRRM 3265 (1983).

<sup>15</sup> Boys Market, Inc. v. Retail Clerks Local 770, 398 U.S. 235, 74 LRRM 2257 (1970).

<sup>16</sup> Teamsters Local 174 v. Lucas Flour Co., 369 U.S. 95, 49 LRRM 2717 (1962).