

WHAT CONSTITUTES LAWFUL PICKETING IN NEW JERSEY.—The status of labor in the courts of this country, in recent years, has been the subject of many articles, and when the discussion makes reference to New Jersey, it has been passed over with a few general remarks. Prior to 1921, it has been said that all picketing in New Jersey was illegal;¹ then more recently, after some doubt on the subject, orderly, non-intimidating picketing was found to be legal.² This state has also been praised for its somewhat liberal definition of peaceful picketing³ and yet has been accused of treating labor organizers as officious intermeddlers and agitators.⁴ When a complete analysis of the law of this state is made, the general phrases so aptly applied, fade; and the writer is faced with a volume of decisions not forming a current, but rather an ebb and flow.⁵

The scope of this note is to follow the ebb and flow of the reported cases with a view to finding if there is an underlying principle upon which the court relies when confronted with an application for a preliminary injunction in a labor dispute. For this purpose, the problem can be divided into three component parts: First, the legality of the strike, the usual concomitant of a labor dispute; Second, the nature of the picketing, and the means employed; and Third, miscellaneous factors affecting the status of the striking workers.

As to the legality of the strike, it is of utmost importance, for where the object of the strike is of itself unlawful, all acts done in support thereof are unlawful⁶ since the statute⁷ does not legalize picketing⁸

1. COMMON AND ANDREWS, *PRINCIPLES OF LABOR LEGISLATION*, (1927), 120.

2. Jerome R. Hellerstein, *Picketing Legislation and the Courts*, (1932), 10 N. C. L. REV. 158, 165.

3. Frank E. Cooper, *The Fiction of Peaceful Picketing*, (1936), 35 MICH. L. REV. 73 at 78, referring to definition in *Bayonne Textile Corp. v. American Federation of Silk Workers*, 116 N.J.Eq. 146, 163. "Picketing is lawful if it does not have an immediate tendency to intimidation of the other party to the controversy, or to obstruct free passage such as the streets afford consistent with the right of others to enjoy the same privilege."

4. Calver Magruder, *A Half Century of Legal Influence Upon the Development of Collective Bargaining*, (1937), 50 HARV. L. REV. 1071, 1078.

5. Milton R. Konvitz, *Labor and the New Jersey Courts*, (1935), 4 MERCER BEASLEY L. REV. 1.

6. *International Ticket Co. v. Wendrich*, 122 N.J.Eq. 222, 193 Atl. 808 (Ch. 1937); *aff'd*, 123 N.J.Eq. 172, 196 Atl. 474 (E. & A. 1938).

which must be tested by the lawfulness of its purpose. There appears to be several distinct grounds for finding a strike to be illegal. Where the strike is called in violation of a union contract, such a strike and the picketing accompanying it will be enjoined;⁹ or where a trade union misrepresented itself as a member of the American Federation of Labor, and called a strike because the employer signed a contract with the local of that organization, it was held that such a strike was also illegal.¹⁰ Finally, but by far the most material, if the strike is called by a trade union to enforce, or to obtain a "closed shop," the strike is illegal.¹¹ In one case, the court held that where a strike for a "closed shop" is not an incident to a broad move toward a monopolization of the labor market, an injunction will not lie,¹² but the case stands alone against a long line of contrary holdings, one of which was affirmed by the Court of Errors and Appeals after this case.¹³

In addition to circumstances, as above set forth, which makes a strike and the consequent picketing illegal, it is well-settled that when there is no strike, picketing, whether peaceful or not, will be restrained;¹⁴

7. R. S. (1937) 2:29-~~77~~

8. *Supra* note 6. *Cf.* *Senn v. Tile Layers Protective Union*, 301 U.S. 468, 57 S. Ct. 857, 81 L. Ed. 1229 (1937).

9. *Jersey City Printing Co. v. Cassidy*, 63 N.J.Eq. 759, 53 Atl. 230 (Ch. 1902); *Gilchrist Co. v. Metal Polishers etc. Union*, 113 Atl. 320 (Ch. 1919, no state report). A contrary result was reached in *Stillwell Theatre, Inc. v. Kaplan*, 259 N.Y. 405, 174 N.E. 63.

10. *Jordan's Wearing Apparel, Inc. v. Retail Clerks Union of N. J.*, 193 Atl. 806 (Ch. 1937, no state report).

11. *Blakely Laundry Co. v. Cleaners & Dyers Union*, 11 N.J.Misc. 915, 169 Atl. 541 (Ch. 1933); *Elkind & Sons, Inc. v. Retail Clerks etc. Assn.*, 114 N.J.Eq. 586, 169 Atl. 494 (Ch. 1933); *J. Lichtman & Sons v. Leather etc. Union*, 114 N.J.Eq. 596, 169 Atl. 498 (Ch. 1933); *Restful Slipper Co. v. United Shoe & Leather Union*, 116 N.J.Eq. 521, 174 Atl. 543 (Ch. 1934); *Wasilewski v. Bakers Union, Local No. 64*, 118 N.J.Eq. 349, 179 Atl. 284 (Ch. 1935); *International Ticket Co. v. Wendrich*, *supra*, note 6.

12. *Four Plating Co. v. Mako et al*, 122 N.J.Eq. 298, 194 Atl. 53 (Ch. 1937).

13. *International Ticket Co. v. Wendrich*, *supra*, note 6, was affirmed by the Court of Errors and Appeals in 1938.

14. *Gevas v. Greek Restaurant Workers Club*, 99 N.J.Eq. 770, 134 Atl. 309 (Ch. 1926); *Snead & Co. v. Local No. 7 International Molders Union*, 103 N.J.Eq. 332, 143 Atl. 331 (E. & A. 1928); *Feller v. Local 144 International L. G. W. Union*, 121 N.J.Eq. 452, 191 Atl. 111 (E. & A. 1937); *Mitnick v. Furni-*

or when picketing continued after the strike was over, that is, by filling the vacancies created by the strikers, it was held that such picketing was illegal.¹⁵

After establishing a legal strike, the next inquiry is to whether the picketing itself is lawful. Any intimidation, vile or abusive language, or use of force, will bring the acts within the injunctive power of the Court of Chancery.¹⁶ In the absence of intimidation picketing, if peaceable, is lawful,¹⁷ except in cases where access to the employer's business or free passage on the streets is obstructed.¹⁸ The strikers are further enjoined from influencing third parties who do business with the employer for the reason that the statute limits picketing entirely to disputes between an employer and employe.¹⁹

The third and final factor in determining if the picketing is lawful is to be found in the *ratio decidendi* of a recent case²⁰ where there was

ture Workers Union Local 66, 124 N.J.Eq. 147, 200 Atl. 553 (Ch. 1938), appeal dismissed as parties had settled differences in 125 N.J.Eq. 142, 4A2d, 277 (E. & A. 1939). *Contra*, Nann v. Raimst, 255 N.Y. 307, 174 N.E. 690. "The legality of the conduct of the members of a labor union in picketing shops employing members of a rival union is not affected by the fact that no strike is in progress."

15. The Mode Novelty Co. v. Taylor, 122 N.J.Eq. 593, 195 Atl. 819 (Ch. 1937). It is suggested that unless this doctrine be limited to a *bona fide* employment, resort might be had by unscrupulous employers to the use of "scab" workers to fill the vacancies, then appeal to the Court of Chancery to restrain the strikers. After which the employer having attained the dominant position could re-employ the former employes, but only under strict conditions.

16. Bayonne Textile Corp. v. American Federation of Silk Workers, 114 N.J.Eq. 307, 168 Atl. 799 (Ch. 1933); modified 116 N.J.Eq. 146, 172 Atl. 551, 92 A.L.R. 1450 (E. & A. 1934); Restful Slipper Co. v. United Shoe & Leather Union, *supra*, note 11.

17. *Supra*, note 16.

18. Eastwood-Neally Corp. v. International Assn., etc., 124 N.J.Eq. 274, 1 A2d 477 (Ch. 1938) and cases cited *supra*, note 16.

19. The Evening Times Printing & Publishing Co. v. American etc. Guild, 122 N.J.Eq. 545, 195 Atl. 378 (Ch. 1937); modified 124 N.J.Eq. 71, 199 Atl. 598 (E. & A. 1938). But see Newark Ladder & Bracket Sales Co., Inc. v. Furniture Workers Union, 125 N.J.Eq. 99, 4 A2d 49 (Ch. 1939). The pertinent facts are that an integrated business was carried on by one person through the medium of three corporations. Where workers on strike in one corporation picketed a second, it was held to be legal.

20. Dolan Dining Car Co., Inc. v. Cook and Assistants etc A. F. L. *et al.*, 124 N.J.Eq. 584, 4 A2d 5 (Ch. 1938). The complainant owned a small dining

a labor dispute and only three workers were picketing.²¹ Access to complainant's place of business was not obstructed by the strikers, and there appeared to be no basis for awarding an injunction. The reasons given, *inter alia*, were that it did not appear that it was necessary to invoke the aid of the union to settle the differences, and that when a national union is enlisted in the aid of workers in such a small business, it works a gross inequality, and the equitable rules designed to protect employes may not be invoked to permit oppression of an employer.

It would seem from this case that the somewhat simplified rules for ascertaining if the picketing is lawful, that is, a lawful strike,²² peaceable picketing with obstructing the streets or complainant's place of business²³ have now been complicated by an additional factor. If the court in future labor decisions follows the rules set forth in this case,²⁴ it must then determine if (1) there is a need to invoke the aid of the trade union, and (2) is the respective bargaining powers of the employer and employes in a balance, and if not, will the equitable rules in favor of the employes be suspended to avoid the working of an injustice upon the employer.

It is plain that there is a need of a legislative declaration defining the scope of, and the grounds for, the injunction; but any statute will meet with constitutional objections as a limitation on the inherent power of the Court of Chancery to issue them.²⁵ The Chancellor might promulgate rules to govern the Vice-Chancellors themselves, who are now limited only by broad equitable principles and the requirement of two

car. It was operated by an officer of the company and the three individual defendants, who were the only employes. All three were members of the defendant labor union. Without waiting to negotiate with the employer direct, they asked the business agent of the union to negotiate for better working conditions. After several weeks of fruitless negotiation, the union called a strike. Held: On a bill for injunction, granted.

21. Complainant alleged that more men were picketing, but the fact is immaterial to the decision.

22. Cases cited *supra*, note 11.

23. *Supra*, note 18.

24. Dolan Dining Car Co. Inc. v. Cooks and Assistants etc. A. F. L. *et al.*, *supra*, note 20.

25. Cf. Eastwood-Neally Corp. v. International Assn. etc., 124 N.J.Eq. 274, 1 A2d 477 (Ch. 1938).

days' notice before granting a preliminary injunction,²⁶ in the absence of immediate, substantial, and irreparable injury.

The present state of the law indicates that although the court feels that trade unions are lawful and laudable in themselves,²⁷ whenever they attempt to exercise a rightful power, that is, to call a strike, in order to protect themselves and their members, they will be prevented.²⁸ This is most unsatisfactory, from the point of view not only of the trade union, but also of the employe member of it.

RES JUDICATA—WHERE INAPPLICABLE.—*Res judicata*¹ is a rule of universal law pervading every well regulated system of jurisprudence, and is put upon the two grounds, embodied in the various maxims of the common law.² The one is a public policy and necessity which makes it to the interest of the state that there should be an end to the litigation; and the other is the hardship on the individual that he should be vexed twice for the same cause.³

The *res judicata* doctrine was first definitely formulated in the *Duchess of Kingston's case*.⁴ The two main rules embodied within the doctrine are: (1) The judgment or decree, without fraud or collusion,⁵ of a court of competent jurisdiction upon the *merits* concludes the parties and the privies to the litigation, and constitutes a bar to a new action or suit involving the same cause of action either before the same

26. Chancery Rule 212.

27. *Wasilewski v. Bakers Union Local No. 64*, 118 N.J.Eq. 349, 179 Atl 284 (Ch. 1935).

28. Cases cited *supra*, note 11.

1. *Res Judicata* or *Res Adjudicata* is "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settle by judgment." BLACK'S LAW DICTIONARY, 2nd Edition.

2. See cases collected in 34 *Corpus Juris*, 743.

3. *In re Walsh*, 80 N.J.Eq. 565, 74 Atl. 563 (E. & A. 1909); *Putnam v. Clark*, 34 N.J.Eq. 532 (Ch. 1881); *Kennedy v. New York*, 196 N.Y. 19, 89 N.E. 360 (1909); *Epstein v. Soskin*, 86 Misc. 194, 148 N.Y.S. 323 (1914).

4. *Kingston's Case*, 20 How. St. Tr. 355, 2 Smith Lead. Case (8th Ed.) 784.

5. *Howard v. Huron*, 5 S.D. 539, 59 N.W. 833, 26 L.R.A. 493 (1894).