
Even Adam Had A Hearing!

Labor Injunctions

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What are they?

Why are they?

What do they do to workers' rights?

COMMITTEE ON LABOR INJUNCTIONS
(Organized by the American Civil Liberties Union)

100 FIFTH AVENUE—ROOM 1403, NEW YORK CITY

January, 1931

EVEN ADAM HAD A HEARING before he was evicted from the Garden of Eden! As far back as we can go in history it has always been recognized that anyone accused has the right to a hearing. It is a basic principle of law and morals accepted at all times and in all countries.

But organized labor in American courts gets no hearing even when the very life of a union is at stake. Courts stop ordinary union activities by injunctions without a chance for them to raise their voices until after the order is made.

Labor is demanding now a hearing in the courts before injunctions are issued and for trial by jury when cited for violating injunctions. It demands that our judges be prevented from practically writing laws to suit their personal views, and to treat as crimes acts which legislatures have not so designated.

For forty years remedies for injunctions have been proposed. Political parties have adopted planks pledging restrictions on the powers of the courts. Bills have been introduced in Congress and the state legislatures. A few laws have been passed but the essential evils remain.

A determined effort is now being made to pass relief measures both in Congress and the state legislatures. For that reason this little pamphlet is offered to explain clearly and briefly to the layman just what injunctions are and how they work.

Labor Injunctions — What Are They?

1. What are the ways of preventing disorder in a community?

There are three ways: (1) police, (2) militia, (3) courts through injunctions.

2. Are these available to stop damage to life and property in strikes?

Yes, any one of them.

3. What are injunctions?

Injunctions are orders of the court instructing persons not to do certain acts. An injunction is one of the ways of preventing disorder in a community.

4. What types of injunctions are there?

I. Preliminary restraining order. Also called temporary restraining order, *ex parte* order, "stay," or ambiguously, temporary injunction (issued without notice).

II. Temporary injunction. Also called "injunction pendente lite" issued after a hearing and remaining in force until (a) vacated after trial or appeal, (b) discontinued.

III. Permanent injunction. Issued only after trial, as distinguished from hearing.

5. How are injunctions obtained?

Lawyers petition the court and produce sworn statements called affidavits, stating that there will be irreparable damage to property (the term "Property" has been extended to mean among other things, the right to do business and make profits); and that no adequate remedy exists at law. The last is rarely true because the police can almost always protect life and property.

8. How does the judge decide when to issue an injunction?

On the basis of the affidavits presented, the judge may issue a temporary injunction forbidding workers to do the things complained of and such others as he deems necessary to protect property and life.

9. Is there a trial or hearing?

The workers are not heard before the issuance of the preliminary restraining order. This preliminary restraining order may continue in force for a long period before there is a hearing. Then, after a hearing, this restraining order may be continued as a temporary injunction, which in turn may remain in force a long time awaiting the trial for a permanent injunction.

10. Are these hearings of use to labor unions?

The hearings for temporary injunctions are fixed by the judge. They may be for a time when the strike has become a thing of the past. But in the meantime there is seldom any necessity for seeking to make the temporary injunction permanent and few permanent injunctions are sought or issued.

11. What kind of acts does a labor injunction forbid?

It forbids crimes such as breaches of the peace, assaults, violations of the anti-trust law. Such crimes are already forbidden by statutes. In most cases injunctions also forbid acts, that are *not crimes*, which the judge thinks may occur and that if they do may cause irreparable injury to property. In other words through injunctions a new category of anti-social acts are thus created without mandate of elected representatives. This is so-called "judge-made law."

12. What kind of acts that are not crimes are prohibited by labor injunctions?

Among those that have been forbidden in injunctions are: picketing, parading, boycotting, congregating near the place where there is a strike, circulating pamphlets or newspapers, paying strike benefits. In addition: picketing by persons who can not speak English, and praying and singing on the roads have been forbidden; strikers have been restrained from attending certain churches. In some cases union leaders have been forbidden to call strikes, have been restrained from inducing persons to stop work or to join a union, or from carrying on legal procedures in behalf of strikers.

13. How are injunctions enforced?

The judge issues an order instructing the court's marshal to arrest the person accused of violating the injunction. He is brought before the judge who then determines whether the injunction has been violated. If he finds that the injunction has been disobeyed, the judge holds the offender in contempt of court and punishes him by fining or imprisonment or both. In many states there is no definite penalty fixed by law for the time he may stay in jail.

14. How long does a permanent injunction last?

Forever unless changed by the judge.

15. Why do not unions appeal from injunctions to higher courts?

Sometimes this is done. But, if there is a strike, the harm to the workers has been done because many normal strike activities have been forbidden. Besides, appeals are very expensive and there are long delays.

What Are the Results of Injunctions?

1. What happens when an injunction is issued?

There is a general breakdown in the morale of the workers and a loss of leadership. Frequently the efforts of national, as well as local, leaders are limited by injunctions. The public often is prejudiced against the strikers because they feel that the issuance of an injunction means that a crime has already been committed, although this is rarely true.

2. Why are unions afraid of injunctions?

Because when an injunction is issued the strike is usually crippled. Because violation results in contempt charges and jail. Because contempt charges are tried without a jury and can be brought against persons who sometimes never have seen the original injunction, and would not understand it if they had read it. Even Supreme Court judges have differed as to the legal construction of injunctions. Also because bail is not granted as a matter of absolute right.

3. Are the constitutional rights of speech and assembly affected?

Almost always the injunction limits these rights. In many cases they are done away with altogether because meetings are forbidden and the issuance of pamphlets, circulars, and newspapers are not permitted. The vague general language used in injunctions creates doubt and fear so that men hesitate to exercise their rights of free speech and assemblage.

4. Is the constitutional right of trial by jury affected?

Contempt charges are tried by a judge without a jury. We have adopted the English system of the Star Chamber and allow the judge who issued the injunction to try the man who is accused of violating his order. Before the introduction of the Star Chamber in England, all contempt charges were tried by jury.

5. What happens to the constitutional clause in regard to limitation of punishment?

Violations—excessive bail, excessive fines, cruel and unusual punishment—occur because the judge and not a legislative enactment fixes the penalty.

6. What happens to the presumption that a man is innocent until he is proven guilty?

It disappears, because if he is brought before a court, accused of contempt, the supposition is that he is guilty of violating the injunction and must prove himself innocent.

7. What is the effect on the public respect for the courts?

Among thinking people there is a marked decrease in respect for the

courts. There is opposition to so much power being exercised by a single individual, to the deprivation of the right to confront witnesses, to the absence of jury trial, to allowing the person whose order may have been disobeyed to determine the question of guilt.

8. What is the effect on the labor movement?

There is a strong hostility to the use of injunctions and against judges who thus make acts crimes that have not been so declared by the legislatures or by Congress. It encourages evasion and violence.

Labor Injunctions — Why Are They?

1. Why do employers get injunctions?

Employers recognize that an injunction is an effective way of breaking a strike. They seek to have it declared an illegal conspiracy and thus make all acts of the union illegal. Injunctions are frequently sought to hamper union activity by restricting the holding of meetings, picketing, boycotts or paying of strike benefits. Moreover they make possible the jailing of leaders and workers without a jury trial. Injunctions are easy to get.

2. Why does not the union convince the judge that no injunction should be issued?

Preliminary restraining orders, or "stays" are issued without the workers being heard. Employers may ask any judge for an injunction and can usually find one with the employers' point of view. Judges, because of their background and training, normally go out of their way to protect property. Jurors would probably not go as far. After issuing the "stay" the judge is emotionally committed in all later proceedings for a temporary or final injunction.

3. Why is not the regular police machinery used?

By prosecution under the regular police machinery the violator is vouchsafed certain safeguards, confronting him with witnesses, a trial by jury and regular fixed penalties. By prosecuting the violator for the same act under contempt for disobeying an injunction these safeguards for the accused are avoided. Proof of guilt is more easily accomplished. Also if it is desired to forbid acts that are not forbidden by law an injunction is quicker than having a bill passed by a legislature.

4. Are injunctions necessary to keep public peace?

Very rarely. In strikes crimes are seldom committed and, if so, would normally be handled by the police through the criminal courts. Whenever the judge takes the law in his own hands through injunctions he makes for a further breakdown of the criminal law.

What Courts Issue Labor Injunctions?

1. In what Courts are injunctions issued?

In either Federal or State Courts. There seems to be a shift at present to the Federal Courts.

2. When may they be issued by the Federal Courts?

They may be issued by these courts if the parties involved are citizens of different states. They can also issue injunctions where interstate commerce may be interfered with or to enforce federal laws.

3. Why are they so often issued in Federal Courts?

Federal Judges are appointed for life and they are naturally less responsive to public opinion than local elected judges. Moreover, the state courts in many instances as in New York have been more insistent on the rights of labor.

4. How long has the injunctive process been invoked in labor disputes?

The first in the United States was in 1880, in New York City.

What Are the Remedies?

1. What remedies are suggested for limiting the Courts' right to issue an injunction?

Forbid the courts to issue injunctions in labor disputes. Provide that no injunction can cover acts that are already declared to be crimes. Provide that the normal acts of a labor union in calling or carrying on a strike must not be interfered with. Except upon clear proof of participation union leaders and members shall not be jailed or fined for acts of others. Destroy present validity of "Yellow-Dog" contracts. Create trial by jury and prevent delay in appeals. Have judge sit other than one who issued injunction when contempt arises from attack on his conduct or character. Fix definite penalties for contempt covered by injunction.

2. If injunctions in other matters are to be retained, how could labor be protected?

As suggested above, the normal acts of a trade union could be declared by law as outside the power of courts to enjoin. It would pronounce the right to strike, parade, picket, assemble, circulate literature, pay strike benefits, etc.

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