Sixth Edition

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Published by

SOUTH-WESTERN PUBLISHING CO.

CINCINNATI WEST CHICAGO, ILL. DALLAS PELHAM MANOR, N.Y. PALO ALTO, CALIF.

ISBN: 0-538-12980-8

Library of Congress Catalog Card Number: 78-65536

3 4 5 D 3 2 1

Printed in the United States of America

Preface

This Sixth Edition of *Labor Law and Legislation* retains the objective of previous editions: presenting a "coherent picture of labor law and legislation in its present social setting as conditioned by landmarks of the historical past." To achieve this continuing objective, a number of older cases have been removed or reduced to textual reference, making room for more current cases and materials.

The evolving labor law concepts are presented in both case and essay form in order to help the student gain a fuller understanding of problems of labor relations in the United States, the legislative foundations of our labor laws, and the legal processes and institutions that infuse our labor law with its effectiveness. Case and chapter questions are utilized to further assist the student in reaching an understanding of the materials.

I wish to express my appreciation to all those who have helped to make this book possible, especially to prior authors, Stephen J. Mueller and A. Howard Myers. I would also like to express appreciation to my research assistant, Matthew A. Kameron.

Suggestions for improvement of this book will be cordially welcomed.

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Chapter 1

Labor Law-Sources and Doctrines

SECTION 1/THE LAW AND LABOR

The law can be defined as a body of rules for guiding our conduct or as an instrument for social control. In our democratic system, law provides a framework for group relations and an orderly method of change. With established procedures and rules, the law gives the stability of conservative methods to the governing authorities and to the individuals and interest groups that are governed. With the continuing development of new needs and changed conditions, the law affords us a flexible means of adaptation to a dynamic economy and an evolving society.

The seeds of labor law began to develop with the end of The Age of Feudalism, a time which saw the majority of people in Western Europe freed from serfdom. As a result, a large new class of wage earners was created, a class which had to be dealt with by those in power, the landed gentry. These beginnings were carried over into the New World. In early America the supply and demand of the labor market were soon affected by the spontaneous self-help efforts of working groups, the forerunners of trade unions. On occasion the courts were asked to intervene to determine the rights of owners, laborers, and the public. The law which resulted, known as common or judge-made law, evolved from these determinations.

Our American constitutional form of government divides the responsibility for the law and its evolutionary change. The division of authority between the federal government and the state governments is defined by constitutional standards. Jurisdictional lines are themselves subject to interpretation and modification by both judicial and legislative action. The substance of the labor-management law itself has evolved through legislation, judicial decisions, administrative rulings, and executive enforcement as a joint product of the three branches of government. These all interact upon one another, and from this interaction labor law has evolved.

As we shall see, the influence of the courts for over a century was directed primarily at protecting the right of contract, property, and the freedom of the market, which frequently left the worker with little opportunity or market power to match the employer's superior position and bargaining power. In the past fifty years, however, the neglect of human rights and the support of property rights in

the "free" market has been corrected, mostly by legislation. That reversal in recent decades has caused a revolution of labor standards and union relations. The evolving public policy and its case-by-case application to specific areas of management and labor activity provide the subject matter of the ensuing chapters.

At the outset, two broad questions are presented. First, what are the sources of current American labor law? Second, what early doctrines and historical landmarks have influenced the course that labor law and legislation has subsequently taken? It should be apparent that little more than a survey treatment can be accorded these questions.

SECTION 2/SOURCES OF LABOR LAW

Labor law is a heterogeneous body of regulations which draws upon other established fields for much of its procedure and substance. When, for example, a labor union enters into a collective agreement with an employer, that agreement becomes subject to the law of contract as to its validity and construction. If it is breached by one of the parties, the law of evidence is resorted to in proving the agreement and its breach, while the law of damages may determine the compensation to be rendered the aggrieved party. In the course of the breach of a contract, assuming that a trespass to person or property has been committed as an incident of strike or picketing activity, the rules peculiar to tort law are brought into play. If an injunction is requested, the law of equity is invoked. These and other rules of law drawn from various fields represent one source of American labor law.

A second major source of American labor law is found in our heritage from the English as to their common law and their statutory enactments.

A third source of our labor law, the most important, is the authority to be found in the Federal Constitution. Legislation such as the National Labor Relations Act and the Railway Labor Act have been enacted by Congress under the delegated powers in the Constitution, principally under the commerce power. Not only is the Constitution important because it is the source of all Congressional authority, but also in the labor area because of certain rights that it guarantees to all citizens. Such concepts as freedom of speech and press have been the nexus of extended litigation involving permissible strike, picket, and boycott activity by labor unions.

The following sections of the Constitution are reprinted here because they embrace the principal powers and rights mentioned above and are repeatedly referred to in many of the cases included in this series.

1. Article I. Section 8. "The Congress shall have Power. . . . To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes. . . ."
2. First Amendment. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."
3. Fifth Amendment. "No person shall . . . be deprived of life, liberty, or property, without due process of law. . . ."

4. Fourteenth Amendment. Section 1. " . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The federal government has only a limited police power, that is, power to burden property and contract rights in the interest of the general welfare. It has only such police power as is required to effectuate its express and implied powers under the Constitution. The bulk of police power thus resides in the several states, never having been delegated by them to the national government. Under their police power, state legislatures have enacted legislation covering workers' compensation, minimum wages, and general laws touching upon the safety, health, or morals of constituents. Some of the cases included in this text treat the thorny problem facing the Supreme Court when it is called upon to decide a conflict between the state's reserved police power and the constitutional rights of due process and equal protection of law guaranteed to federal citizens by the Fifth and Fourteenth Amendments.

State constitutions, because of the vast body of state labor legislation that is subjected to scrutiny in the state courts, are an additional source of labor law. It should be noted, however, that, in case of ultimate conflict between the state constitution and the Federal Constitution, the latter prevails.

Federal laws such as the National Labor Relations Act, the Fair Labor Standards Act, and the Federal Anti-Injunction Act find their counterparts in state legislation, such as laws governing the limits of permissible strike, picket, and boycott activity. Included are statutes protecting employee and employer in individual dealings and in collective bargaining relations, laws as to dispute handling, and labor standards laws restraining the effects of competition in the labor market. A state act may be concurrent with federal legislation or may exist in the absence of similar federal legislation. If state and federal acts in the same area are inconsistent, then the federal law prevails.

Court decisions, or case law, contribute an important segment to the law of this field. Under some statutes, such as the National Labor Relations Act, only the federal courts have complete jurisdiction; as to others, state courts have jurisdiction concurrent with the federal.

Final contribution to the mass of labor law comes from a relatively new source, namely, administrative law. Thousands of rules and decisions are promulgated annually by such agencies as the National Labor Relations Board and the Wage and Hour Administrator of the Fair Labor Standards Act; an example on the state side is the Wisconsin Employment Relations Board, which interprets and carries out the provisions of Wisconsin's Employment Relations Act. These are quasi-legislative and judicial agencies set up to administer those labor laws that require continuing application and interpretation. The courts have been divested of some of their powers in this area because as purely judicial bodies, relatively inexpert and slow in decision, they are not effective for the expeditious settlement of labor controversies; hence, legislatures have more and more delegated interpretative and policing powers to administrative agencies. The courts, nevertheless, have not been completely divested of their control over the results since administrative

decisions and rulings are subjected to court review in the enforcement process. Therefore, court decisions for the most part appear in subsequent chapters as the conclusive authority.

SECTION 3/SECONDARY SOURCES

Secondary sources of labor law, such as the reports of legislative committees, debates, and hearings, may be turned to by administrative bodies or by the courts in connection with the application or the interpretation of legislation that is vague or unclear as to language or as to objective. If the intent is ambiguous, boards or the courts can search the legislative record of discussions leading to the enactment of the statute to determine what the drafters intended to accomplish.

Another secondary source of labor law arises from the conduct of the participants in collective bargaining. Thus, management-union agreements provide a body of rules and procedures, including arbitration of differences as to what shall be included in new agreements or over grievances arising under existing agreements. This contractual law has been called "industrial jurisprudence."

As has been stated already, much of labor law reflects social and economic developments and changes in community thinking. The church, the family, and the schools are among the influences on people's attitudes and moral values, thus affecting judicial and legislative opinion. The content of labor law, as revised over the years, has been, therefore, a reflection of the community thinking as the ultimate source of public standards in our democratic system.

With this brief review of sources, we turn to a consideration of early doctrines in labor law as a prelude to our study for a better understanding of modern legislative and judicial standards.

SECTION 4/ENGLISH BACKGROUND

Because of the inarticulate position of the slave in the ancient civilizations, those periods allowed no urgent labor problem as such. The slave was a mere chattel subject to purchase, usage, and sale at the will of the privileged overlord. Since the slave possessed no rights, no legal remedies were developed. For our purposes, any extended treatment of slave labor forms would seem superfluous.

Much the same can be said of the serf's status under the feudal system of the Middle Ages; however, in comparison to the social and legal position of the slave, we can begin to detect the emergence of limited rights. "The serf occupied a position in rural society which it is difficult for us to understand. He was not a slave . . . because he was free to work for himself at least part of the time; he could not be sold to another master; and he could not be deprived of the right to cultivate land for his own benefit. He was not a hired man, for he received no wages. And he was not a tenant farmer, inasmuch as he was attached to the soil . . . unless he succeeded in running away or in purchasing complete freedom, in which case he would cease to be a serf and would become a freeman."[1]

Feudalism as a social system in England did not disintegrate rapidly nor for any single reason. Four major causes, concurrently operating, served to weaken,

[1] Hayes, *A Political and Cultural History of Modern Europe* (New York; Macmillan, 1936), I, 49.

and eventually to destroy, this planned and ordered society based upon the tenure system of land holding and centering about the manor as the economic, political, and military unit.

1. The Crusades, ending in the thirteenth century, which decimated the ruling caste from which the feudal leaders were drawn.
2. The sweeping of western Europe by the bubonic plague, which caused an acute labor shortage.
3. The defection of the serfs and villeins from the manors to the towns and cities.
4. The reopening of international trade routes to the East, with its consequent emphasis upon commerce rather than land as a source of wealth.

A true system of labor jurisprudence thus followed the disintegration of feudalism, for it then became necessary to develop new rules of law to govern labor relationships.

Mercantilism, extending roughly from the years 1350 to 1776, superseded feudalism. Its philosophy centered about the objective of securing a favorable balance of foreign trade, which would bring in gold; it was to be attained by securing foreign monopolies, supported by an expanded merchant fleet and strengthened agriculture and manufacture. English mercantilism represents a rather illuminating corollary with present-day societies based upon minute governmental regulation of production and distribution factors, for it too was predicated upon the same foundation. It is to this era that we must turn to trace the source of such modern economic forms as the trade union and the employer association. These are but modified outgrowths of the craft and merchant guilds that early saw the economic advantage arising from monopolistic competition and collective action.

One of the major effects of the Black Death, the growth of urban centers, the freeing of serfs, and the infusion of life into international commercial channels was the creation of an acute labor shortage, which, given free expression in a price and profit economy, caused the price of labor to rise sharply. Alarmed at this turn of events, the landed gentry and merchants, who were now dependent upon hired laborers and who alone were represented in Parliament, secured the passage of restrictive labor legislation and the assistance of the judiciary in counteracting the all-too-favorable position of labor.

The earliest restrictive labor legislation is found in 1351 in the Statute of Laborers[2], in which a broad, national attempt was made to reduce labor's bargaining power by requiring able-bodied persons to work, by fixing the price of labor, by controlling the freedom of labor to contract, and by providing criminal punishment for the violation of its mandates.

Over two hundred years later, Parliament issued in 1562 a superseding Statute of Laborers[3], which was perhaps more embracive than the Act of 1351 had been. It defined the elements inhering in the master-and-servant relationship, established rules limiting the mobility of labor to stop the exodus of labor from rural to urban centers, outlined product quality and price standards to control craft and merchant guilds, and fixed by law the price of labor.

[2] 25 Edw. 3, St. 1.

[3] 5 Eliz. C. 4.

Governing the commercial activity of this mercantile era, we find the permissible labor contract delineated by the statute and common law, and the area of governmental regulation extended also over manufacture and merchandising. Both Statutes of Laborers incorporated limits to permissible employer activity as it touched the employer's labor and marketing relations. Business combinations of this period, more properly termed merchant and craft guilds, engaged in considerable self-imposed regulation, in the interest of promoting monopoly and of maintaining prices, quality, and output standards. The merchant and craft guilds were, however, basically concerned with the problem of limiting outside competition.

Trade unions, as distinguished from labor or industrial unions, found their inception in the decline of the guild system, which was accelerated by the Industrial Revolution of the 18th Century. With the substitution of capital equipment for labor, necessitated by the technological advancement of the Revolution, many journeymen found themselves unable to enter the master ranks because their finances were inadequate to the heavier fixed and working capital requirements. As a corollary, many erstwhile masters were forced back into the journeyman ranks for the same reason. An amalgamation of these two disenfranchised groups culminated in the formation of the earliest true trade unions, which were utilized to nullify the monopolistic bargaining advantage of the fewer remaining masters, who were banded together in powerful employer groups and, by now, could be classified as manufacturers rather than artisans. It was these early trade unions that were made the subject of the mercantile period's labor law.

SECTION 5/THE CRIMINAL CONSPIRACY DOCTRINE

Concurrent with statutory control, the English common law developed what is known as the doctrine of *criminal conspiracy,* which made unlawful concerted action by workers in making demands upon merchant or manufacturer. The case of the *King against the Journeymen-Taylors of Cambridge,* decided in England in 1721, illustrates the criminal conspiracy idea applied to labor under statute and common law. There it was held that, while the conviction of the defendant tailors could not be sustained by the appeals court on the basis of the Criminal Conspiracy Statute of 1720[4] due to the prosecutor's failure to properly bring the case within the statute, yet the conviction of the defendant tailors would stand because a labor combination was a criminal conspiracy at common law and could be punished independent of whether the procedural requirements of the statute were met.

In *Commonwealth v. Pullis* (the Philadelphia Cordwainer's Case of 1806), the first recorded labor relations case in the United States, a jury found a group of journeymen cordwainers (boot and shoemakers) guilty of a criminal conspiracy where the cordwainers mutually agreed to refuse to work for any employer who paid less than a fixed rate. This decision is reported below. The *New York Journeymen-Cordwainers* case, decided in 1809, followed a rule similar to that of the *Journeymen-Taylors of Cambridge,* holding that a labor combination was in violation of the criminal law of New York State.

[4] 7 Geo. 1, C. 13.

Commonwealth v. Pullis (Philadelphia Cordwainer's Case of 1806)

Philadelphia Mayor's Court, 3 Commons and Gilmore

[From the judge's charge to the jury.] What is the case now before us? . . . A combination of workmen to raise their wages may be considered in a two fold point of view: one is to benefit themselves [and] the other is to injure those who do not join their society. The rule of law condemns both. If the rule be clear, we are bound to conform to it even though we do not comprehend the principle upon which it is founded. We are not to reject it because we do not see the reason of it. It is enough, that it is the will of the majority. It is law because it is their will—if it is law, there may be good reasons for it though we cannot find them out. But the rule in this case is pregnant with sound sense and all the authorities are clear upon the subject. Hawkins, the greatest authority on the criminal law, has laid it down, that a combination to maintaining one another, carrying a particular object, whether true or false, is criminal. . . .

In the profound system of law, (if we may compare small things with great) as in the profound systems of Providence . . . there is often great reason for an institution, though a superficial observer may not be able to discover it. Obedience alone is required in the present case, the reason may be this. One man determines not to work under a certain price and it may be individually the opinion of all: in such a case it would be lawful in each to refuse to do so, for if each stands, alone, either may extract from his determination when he pleases. In the turn-out of last fall, if each member of the body had stood alone, fettered by no promises to the rest, many of them might have changed their opinion as to the price of wages and gone to work; but it has been given to you in evidence, that they were bound down by their agreement, and pledged by mutual engagements, to persist in it, however contrary to their own judgment. The continuance in improper conduct may therefore well be attributed to the combination. The good sense of those individuals was prevented by this agreement, from having its free exercise. . . . Is it not restraining, instead of promoting, the spirit of '76 when men expected to have no law but the constitution, and laws adopted by it or enacted by the legislature in conformity to it? Was it the spirit of '76, that either masters or journeymen, in regulating the prices of their commodities should set up a rule contrary to the law of their country? General and individual liberty was the spirit of '76. It is our first blessing. It has been obtained and will be maintained. . . . Though we acknowledge it is the hard hand of labour that promise the wealth of a nation, though we acknowledge the usefulness of such a large body of tradesmen and agree they should have every thing to which they are legally entitled; yet we conceive they ought to ask nothing more. They should neither be the slaves nor the governors of the community.

The sentiments of the court, not an individual of which is connected either with the masters or journeymen; all stand independent of both parties . . . are unanimous. They have given you the rule as they have found it in the book, and it is now for you to say, whether the defendants are guilty or not. The rule they consider as fixed, they cannot change it. It is now, therefore, left to you upon the law, and the evidence, to find the verdict. If you can reconcile it to your consciences, to find the defendants not guilty, you will do so; if not, the alternative that remains, is a verdict of guilty.

[The jury found the defendants guilty of combining and conspiring to raise their wages and the penalty was a fine of eight dollars for each defendant.]

CASE QUESTIONS

1. How did the court view the combination of workers with respect to their intent?
2. Did the court find the continuance of the withholding of labor attributable to a combination?

SECTION 6/LABOR'S ENDS AND MEANS

In the face of then permissible monopolistic practices by large-scale employer groups, some liberal thinking began to concede to labor a correlative right to combine for the purpose of securing a more equitable distribution of the gains of economic progress. The landmark American decision in this transition period covering the basic legality of labor combination, when utilized for proper purposes, is *Commonwealth* v. *Hunt,* reprinted immediately below. Since the rendition of this decision, the right of American labor to organize has not been seriously questioned by either the courts or legislatures.

Under some state laws, conspiring together for any illegal purpose makes the additional charge of conspiracy possible; in some cases this doctrine has been followed against labor organizations. A relatively recent decision of the Supreme Court expressed that body's view on applications of conspiracy charges to a labor union. Reversing a damages award against the United Mine Workers of America which had been allowed by the Kentucky courts in a tort case, the decision of the Supreme Court made this comment as to the conspiracy doctrine:

> The tort claimed was in essence a conspiracy to interfere with Gibbs' contractual relations. The tort of conspiracy is poorly defined and susceptible to judicial expansion; its relatively brief history is colored by use as a weapon against the developing labor movement.[5]

Commonwealth v. Hunt

Supreme Court of Massachusetts, 1842. 4 Metcalf 111, 38 Am. Dec. 346

Shaw, C. J. . . . The general rule of the common law is that it is a criminal and indictable offense for two or more to confederate and combine together, by concerted means, to do that which is unlawful or criminal, to the injury of the public, or portions or classes of the community, or even to the rights of an individual. This rule of law may be equally in force as a rule of the common law, in England and in this commonwealth; and yet it must depend upon the local laws of each country to determine whether the purpose to be accomplished by the combination, or the concerted means of accomplishing it, be unlawful or criminal in the respective countries. . . . Without attempting to review and reconcile all the cases,

[5] *United Mine Workers* v. *Gibbs,* 383 U.S. 715 (1966).