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NOTES AND COMMENTS

The Hobbs Act—An Amendment to the Federal Anti-Racketeering Act

In *United States v. Local 807*¹ the Supreme Court of the United States held that it was not a violation of the Federal Anti-Racketeering Act of 1934² for members of a union to stop trucks entering New York City and by force and violence to compel payment of a day's wages to a member of the union whether his offer to drive the truck was accepted or refused.³ Mr. Justice Byrnes in writing the majority opinion said, "This does not mean that such activities are beyond the reach of federal legislative control."⁴ As a result, the Hobbs Bill was introduced in the House of Representatives as an amendment to the Federal Anti-Racketeering Act of 1934.⁵ It was generally recognized in Congress that the Bill was inspired by the decision in *United States v. Local 807*.⁷ Although introduced as an amendment, it was the intent of the author of the Hobbs Bill to "wipe out" the Act of 1934 and to substitute a new act in its place.⁸ In spite of the opposition of labor leaders,⁹ the Hobbs Bill became law on July 3, 1946.¹⁰

¹ *United States v. Local 807 of the International Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers of America*, 315 U. S. 521, 62 Sup. Ct. 642, 86 L. ed. 1004 (1942). Local 807 and 26 individuals were also indicted for violation of §1 of the Sherman Act. Conviction was reversed by the Circuit Court of Appeals for the Second Circuit and the government did not seek review of this part of the judgment. Notes (1942) 11 *FORDHAM L. REV.* 204, 41 *MICH. L. REV.* 338, 19 *N. Y. U. L. Q. REV.* 440, 16 *TEMPLE L. Q.* 329, 90 *U. OF PA. L. REV.* 972.

² 48 *STAT.* 979 (1934), 18 U. S. C. A. §420a-e (Supp. 1945), "An Act to protect trade and commerce against interference by violence, threats, coercion, or intimidation," approved June 18, 1934; held constitutional, *Nick v. United States*, 122 F. (2d) 660 (C. C. A. 8th, 1941), 138 A. L. R. 791, 811 (1942), *certiorari denied* 314 U. S. 687, 62 Sup. Ct. 302, 86 L. ed. 550.

³ Evidence indicated that in several cases the defendants either failed to offer to work or refused to work for the money when asked to do so. *U. S. v. Local 807*, 315 U. S. 521, 526, 62 Sup. Ct. 642, 644, 86 L. ed. 1004, 1008 (1942).

⁴ *Id.* at 536, 62 Sup. Ct. 648, 86 L. ed. 1012.

⁵ 89 *CONG. REC.* 3217 (1943). ⁶ 88 *CONG. REC.* 3101-2 (1942).

⁷ 89 *CONG. REC.* 3201, 3217 (1943), 79 *CONG. REC.* December 11, 1945, at 12028, 79 *CONG. REC.* December 12, 1945, at 12085.

⁸ 89 *CONG. REC.* 3217 (1943), 79 *CONG. REC.* December 12, 1945, at 12095.

⁹ President William Green of the A. F. of L. urged the veto of the Hobbs Bill as "dangerous legislation." *American Federation of Labor Weekly News Service*, Washington, D. C., June 25, 1946.

¹⁰ U. S. Code Congressional Service, Advance Sheet No. 6, p. 405, Pub. L. No. 486, Title 1, §2-5 (July 3, 1946).

The legislative history of the Hobbs Act began on March 27, 1942, 88 *CONG. REC.* 3101-2 (1942); passed the House of Representatives April 9, 1943, 89 *CONG. REC.* 3230 (1943); bill was not reported out of the Senate Judiciary Committee; next passed the House of Representatives on December 12, 1945, 79 *CONG. REC.*, December 12, 1945 at 12106; became an amendment to the Case Bill on May 25, 1946, 79 *CONG. REC.*, May 25, 1946 at 5837; vetoed as part of the Case Bill on June 11, 1946, 79 *CONG. REC.*, June 11, 1946 at 6799; passed Senate as a separate measure June 21, 1946, 79 *CONG. REC.*, June 21, 1946 at 7384; signed by the President on July 3, 1946, 79 *CONG. REC.*, July 3, 1946 at 8487.

The Hobbs Act provides that whoever conspires, attempts, commits or threatens physical violence to any person or property, or in any way or degree obstructs, delays, or affects commerce, or the movement of any article or commodity in commerce, by robbery or extortion, shall be guilty of a felony.

Robbery is defined in the Hobbs Act in substantially the same words as those in the New York Penal Code¹¹ and extortion is defined in almost identical words with those used in the Anti-Racketeering Act of 1934.¹² Title 1 (b), (c) provides:

The term "robbery" means the unlawful taking or obtaining of personal property, from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or anyone in his company at the time of the taking or obtaining.

The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence,¹³ or fear, or under color of official right.

Provisions in the Anti-Racketeering Act of 1934 designed to protect legitimate activities of labor were eliminated by the Hobbs Act and a safeguard for labor was provided in less extensive language. Instead of the provisions in the former Act¹⁴ which stated that "payment of wages by a bona-fide employer to a bona-fide employee" were excluded from the coverage of the Act, and that no court shall construe or apply the provisions of the Act in such manner as "to impair, diminish, or in any manner affect the rights of bona-fide labor organizations in lawfully carrying out the legitimate objects thereof, as such rights are expressed in existing statutes of the United States," the Hobbs Act provides that nothing in the Act shall be construed to repeal, modify, or affect either the Sherman Act, the Norris-LaGuardia Act, the Railway Labor Act or the National Labor Relations Act.¹⁵

¹¹ The New York Penal Code defines robbery as ". . . the unlawful taking of personal property, from the person or in the presence of another, against his will, by means of force, or violence, or fear of injury, immediate or future, to his person or property, or the person or property of a relative or member of his family, or of anyone in his company at the time of the robbery." N. Y. PENAL CODE, §2120, MCKINNEY'S CONSOL. LAWS OF N. Y., ANN., Book 39, Part 2, p. 533.

Congressman Hobbs gave as his reason for copying the New York definition of robbery was that most of these "hold-ups" occurred there. 89 CONG. REC. 3226 (1943).

¹² §420a(b) of the Anti-Racketeering Act of 1934 is as follows: "Obtains the property of another, with his consent, induced by wrongful use of force or fear, or under color of official right"; 48 STAT. 979 (1934), 18 U. S. C. A. §420a(b) (Supp., 1945).

¹³ U. S. Code Congressional Service, Advance Sheet No. 6, p. 405, Public Law 486, Title 1, §1(b), (c).

¹⁴ 48 STAT. 979 (1934) U. S. C. A. §420a-e (Supp., 1945).

¹⁵ Title II of the Hobbs Act is as follows: "Nothing in this Act shall be con-

Will members of a labor union be subject to punishment under the Hobbs Act for engaging in conduct similar to that of members of the Teamsters' Union in *United States v. Local 807*?¹⁶ The decision in that case relied on the legislative history¹⁷ and the specific exemptions¹⁸ of the Anti-Racketeering Act of 1934. The legislative history of the Hobbs Act on the other hand clearly indicates an intent on the part of Congress to punish anyone committing the crimes of robbery and extortion in interstate commerce whether or not in the course of labor activity.¹⁹ The removal of both grounds on which the Supreme Court based its holding that labor was exempt from prosecution under the Anti-Racketeering Act of 1934 makes it apparent that any attempt on the part of members of a labor union to exact "wages" through force and violence or threats thereof as was done in New York by the Teamsters' Union²⁰ will be punishable under the Hobbs Act.

Labor is apprehensive that the Hobbs Act holds the potential danger of judicial misconstruction and that it is the first "Trojan horse" in a campaign to weaken labor organizations.²¹ Is the Hobbs Act anti-labor? Is labor justified in assuming that the Hobbs Act is a threat to its right to strike,²² boycott and picket peacefully²³ for the obtainment of higher

strued to repeal, modify, or affect either section 6 or section 20 of an Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, or an Act entitled 'An Act to amend the judicial code and to define and limit the jurisdiction of the courts in equity, and for other purposes,' approved March 23, 1932, or an Act entitled 'An Act to provide for the prompt disposition of disputes between carriers and their employees, and for other purposes,' approved May 20, 1926, as amended, or an Act entitled 'An Act to diminish the causes of labor disputes burdening or obstructing interstate or foreign commerce, to create a National Labor Relations Board, and for other purposes,' approved July 5, 1935." U. S. Code Congressional Service, Advance Sheet No. 6, p. 405, Public Law 486 Title II (July 3, 1946).

¹⁶ U. S. v. Local 807, 315 U. S. 521, 62 Supp. Ct. 642, 86 L. ed. 1004 (1942).

¹⁷ U. S. v. Local 807, 315 U. S. 521, 528-530, 62 Sup. Ct. 642, 645, 86 L. ed. 1004, 1009 (1942).

¹⁸ *Id.* at 535, 62 Sup. Ct. 647-8, 86 L. ed. 1012.

¹⁹ 89 CONG. REC. 3217, 3222 (1943), 79 CONG. REC., December 12, 1945 at 12085.

²⁰ In 1943 the Head of the Office of Defense Transportation reported that over 1,000 trucks a night were being held up and robbed in the various cities of the United States and over 100 a day at the New York end of the Holland Tunnel. Congressman Hobbs stated that he had received over 1,000 letters and telegrams from farmers all over the country stating that the condition was worse in 1945 than it was in 1943. 79 CONG. REC., December 12, 1945, at 12095.

²¹ 89 CONG. REC. 3223 (1943), 79 CONG. REC., December 12, 1945, at 12087. Statement of Daniel J. Tobin, President of the International Brotherhood of Teamsters (AFL) in *American Federation of Labor Weekly News Service*, Washington, D. C., June 25, 1946. See article by Joseph A. Padway, General Counsel for the A. F. of L. in *AMERICAN FEDERATIONIST*, September, 1946, at 19-20.

²² 48 STAT. 449, 29 U. S. C. A. §151 *et seq.* (July 5, 1935), Section 7 of the National Labor Relations Act, provides: "Employees shall have the right to self-organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid and protection."

Section 13 provides: "Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike."

²³ *Bakery & Pastry Drivers & Helpers Local No. 802, v. Wohl*, 315 U. S. 769,

wages, better working conditions and other legal objectives? The answer appears to be "No." The actual intent of Congress,²⁴ the express provisions in the Act itself,²⁵ and the unusual precaution on the part of the President of the United States in placing before Congress the Attorney General's construction of the Hobbs Act,²⁶ all indicate an improbability that any of the legitimate activities of labor will be made criminal by judicial construction of the Act.

The full significance of the Hobbs Act, however, cannot be ascertained until our courts answer the following question: To what extent, if any, does the Hobbs Act apply in situations in which labor employs its legal weapons; i.e., a right to strike, boycott, and picket to obtain illegal objectives? In *U. S. v. Compagna*²⁷ a threat to strike for an unlawful purpose was considered coercion within the meaning of the original Anti-Racketeering Act. It follows that in order to determine whether a strike is a legal economic weapon of labor or a wrongful use of concerted action it is first necessary to reach a conclusion as to the legality of the objective achieved by the use of a strike.

Is it lawful for a labor union to strike or boycott an employer for introducing labor saving devices in his business and thereby compel him to retain or hire unnecessary workers? The authorities are in conflict²⁸ on this question. In *U. S. v. Carrozo*²⁹ a strike in which the employer was given the choice of not using "truck cement mixers" or paying unnecessary workers met with the approval of the court. This decision, affirmed *per curiam* by the United States Supreme Court,³⁰ considered in connection with the right of labor to strike for lawful objectives indicates that the Hobbs Act will not apply in a similar set of circumstances. However, a different situation is presented in the case in which the strike was fraught with violence and the union was successful in caus-

62 Sup. Ct. 816, 86 L. ed. 1178 (1942); *American Federation of Labor v. Swing*, 312 U. S. 321, 61 Sup. Ct. 568, 85 L. ed. 855 (1940).

²⁴ 89 CONG. REC. 3218 (1943), 79 CONG. REC., December 11, 1945, at 12024, 79 CONG. REC., December 12, 1945, at 12085, 12089, 12095.

²⁵ U. S. Code Congressional Service, Advance Sheet No. 6 at 405, Public Law 486, Title II (July 3, 1946).

²⁶ President Truman approved the Hobbs Bill on the understanding that the bill according to its language and legislative history ". . . is not intended to deprive labor of any of its recognized rights, including the right to strike and picket, and to take other legitimate and peaceful concerted action," 79 CONG. REC., July 3, 1946, at 8417.

²⁷ *United States v. Compagna*, 146 F. (2d) 524 (C. C. A. 2nd, 1945), *certiorari denied*, 324 U. S. 867, 65 Sup. Ct. 912-913, 89 L. ed. 1422 (1945).

²⁸ *U. S. v. Carrozo*, 37 F. Supp. 191 (E. D. Ill. 1941) *affirmed per curiam* in *U. S. v. International Hod Carriers & C. L. Dist. Council*, 313 U. S. 539, 61 Sup. Ct. 839, 85 L. ed. 1508 (1941); *but see Hopkins v. Oxley Stave Co.*, 83 Fed. 912 (C. C. A. 8th, 1897). *Opera on Tour, Inc. v. Weber*, 285 N. Y. 348, 34 N. E. (2d) 349 (1941), 136 A. L. R. 267, 282 (1942). Ludwig Teller, *LABOR DISPUTES AND COLLECTIVE BARGAINING*, I, §89.

²⁹ *U. S. v. Carrozo*, 37 F. Supp. 191 (E. D. Ill. 1941).

³⁰ *Ibid.*

ing the employer to pay unnecessary workers. Should the employer contend that he acceded to the demands of the union not from economic coercion but solely because of fear of violence or damage to his property, it might be shown that the "stand-by" workers who took money from the employer in the form of wages were guilty of ". . . obtaining property from another, with his consent, induced by wrongful use of actual or threatened force, violence or fear . . ." ³¹ and therefore subject to be prosecuted for extortion as defined in the Hobbs Act.

A threat to strike or a strike for the purpose of requiring an employer to pay a fine to the union for violating a union agreement has been held illegal. ³² Peaceful picketing has been enjoined ³³ because the objective, which was to persuade the employer to pay the union initiation dues for non-union employees, was considered illegal. If unlawful objectives make a strike or picketing for those objectives a wrongful use of concerted action, the fact that an employer in these situations was thus deprived of his property might invoke the provisions of the Hobbs Act.

Labor leaders who use their position in the union to threaten "labor trouble" for the purpose of extorting fees ³⁴ from an employer may be subject to prosecution under the Hobbs Act. Racketeering of this type was punishable under the Anti-Racketeering Act of 1934. ³⁵ Conviction could be had even though the labor leader had a dual motive of improving the wages of the union members as well as extracting fees to feather his own nest. ³⁶

The sit-down strike presents a different problem. The question of the illegality of the objective is not material; instead, the illegality of the strike itself becomes important. The sit-down strike has been declared illegal. ³⁷ But would the participants in a sit-down strike be subject to prosecution under the Hobbs Act? In *Apex Hosiery Co. v. Leader* ³⁸ both employees and non-employees of the plant owner forcibly

³¹ U. S. Code Congressional Service, Advance Sheet No. 6, p. 405, Public Law 486, Title 1, §1(c) (July 3, 1946).

³² *People v. Seefeldt*, 310 Ill. 441, 141 N. E. 829 (1923); *State v. Dalton*, 134 Mo. App. 517, 114 S. W. 1132 (1908); *People v. Barondess*, 133 N. Y. 649, 31 N. E. 240 (1882).

³³ *Silkworth et al. v. Local No. 575 of American Federation of Labor*, 309 Mich. 746, 16 N. W. (2d) 145 (1944).

³⁴ *U. S. v. Lanza*, 85 F. (2d) 544 (C. C. A. 2nd, 1936) *certiorari denied*, 299 U. S. 609, 57 Sup. Ct. 235, 81 L. ed. 449. See Note (1937) *Legislation: Legal Implications of Labor Racketeering*, 37 Col. L. Rev. 993.

³⁵ *Nick v. United States*, 122 F. (2d) 660 (C. C. A. 8th, 1941), *U. S. v. Compagna*, 146 F. (2d) 524 (C. C. A. 2nd, 1945), *certiorari denied*, 324 U. S. 867, 65 Sup. Ct. 912-913, 89 L. ed. 1422 (1945).

³⁶ *Nick v. United States*, cited *supra* note 35, at 669, 670, 138 A. L. R. at 804.

³⁷ *N.L.R.B. v. Fansteel Metallurgical Corporation*, 306 U. S. 240, 59 Sup. Ct. 490, 83 L. ed. 627, 123 A. L. R. 599 (1939). Because the strike was "unlawful" certain of the strikers lost the right to reinstatement with back pay which had been awarded them by the National Labor Relations Board.

³⁸ *Apex Hosiery Co. v. Leader*, 310 U. S. 469, 60 Sup. Ct. 982, 84 L. ed. 1311, 128 A. L. R. 1044, 1075 (1940).

seized the plant and did considerable damage to the property and machinery. The effort of the owner to recover his damages by prosecution under the Sherman Act³⁹ was unsuccessful. Whether another wave of sit-down strikes would produce indictments, where interstate commerce is affected, under the Hobbs Act is a matter of conjecture. Might not the owner's loss of use of his property or its destruction, by a sit-down strike, bring the case within the robbery or extortion provisions of the Hobbs Act?

The Antitrust Division, U. S. Department of Justice, for several years has considered the wrongful use of strikes, boycotts and threats thereof for the purpose of requiring payment of wages to "stand-by" workers when labor saving devices are used,⁴⁰ forcing the hiring of useless workers,⁴¹ preventing the use of cheaper material,⁴² or enforcing illegally fixed prices⁴³ as unlawful and subject to prosecution under the Sherman Act.⁴⁴ A series of recent decisions⁴⁵ by the United States Supreme Court have virtually given labor immunity from prosecution under the Sherman Act. In *Allen Bradley Company v. Local No. 3*, Justice Black said:

"Our holding means that the same labor union activities may or may not be in violation of the Sherman Act, depending upon whether the union acts alone or in combinations with business groups. This, it is argued, brings about a wholly undesirable result—one which leaves labor unions free to engage in conduct which restricts trade. But the desirability of such an exemption of labor unions is a question for the determination of Congress."⁴⁶

Now that many activities of labor which the Antitrust Division con-

³⁹ Act of July 2, 1890, c. 647, 26 STAT. 209, 15 U. S. C. A. §1 *et seq.* as amended.

⁴⁰ Hearings before Subcommittee No. 3 of the Committee on the Judiciary on H. R. 5218, H. R. 6752, H. R. 6872 and H. R. 7067, 77th Cong., 2d Sess. (1942) 408.

⁴¹ *Id.* at 403.

⁴² Miller, *Antitrust Labor Problems: Law and Policy* (1940) 7 LAW & CONTEMP. PROB. 82, 89.

⁴³ *Ibid.*

⁴⁴ Section 1 of the Sherman Act provides that "Every contract, combination in the form of trust or otherwise or conspiracy, in restraint of trade or commerce among the several states or with foreign nations, is declared to be illegal." Act of July 2, 1890, c. 647, 26 STAT. 209, 15 U. S. C. A. §1 *et seq.*, as amended.

⁴⁵ *Hunt v. Crumbach*, 325 U. S. 821, 65 Sup. Ct. 1545, 89 L. ed. 1954 (1945); *Allen Bradley Company v. Local Union No. 3*, 325 U. S. 797, 65 Sup. Ct. 1533, 89 L. ed. 1441 (1945); *U. S. v. Hutcheson*, 312 U. S. 219, 61 Sup. Ct. 463, 85 L. ed. 788 (1941); *Apex Hosiery Co. v. Leader*, 310 U. S. 469, 60 Sup. Ct. 982, 84 L. ed. 1311, 128 A. L. R. 1044 (1940). See Notes (1946) 19 CALIF. L. REV. 256 and (1941) 50 YALE L. J. 787.

⁴⁶ *Allen Bradley Company v. Local Union No. 3*, 325 U. S. 797, 809-810, 65 Sup. Ct. 1533, 1540, 89 L. ed. 1939, 1948 (1945). See *Philadelphia Record Co. v. Manufacturing Photo-Engravers Ass'n of Philadelphia et al.*, 155 F. (2d) 799 (C. C. A. 3rd, 1946). Labor union was enjoined from combining with a business association to prevent the plaintiff from producing photo-engraving products at night. Combination was declared to be in violation of the Sherman Act.

siders illegal cannot be prosecuted under the Sherman Act, the Hobbs Act may acquire a greater significance than it would have otherwise. It may be that henceforth the predominant question to arise in an analysis of the wrongful activities of labor will no longer be whether or not there was a restraint of trade under the Sherman Act, but rather whether or not there was robbery or extortion in interstate commerce as defined in the Hobbs Act.

WILLIAM B. AYCOCK.

Aviation—Liability of Airport for Low Flying—Flights Through Airspace as Taking of an Easement

With the end of World War II, there has been a great advance in the field of commercial aviation both on a national and international scale. This in turn will bring about an increasing amount of litigation over problems incident to air commerce, and result in further development of a body of law peculiar to this type of commerce.

A case of interest in this field was recently decided by the United States Supreme Court,¹ and although the case arose out of facts created by war conditions, the decision is significant as our highest court's first holding on a problem which will be present as long as we have airports and aircraft. That problem is the proper adjustment of the conflicting rights of adjacent landowners and airport operators.

This particular case was an action by one Causby against the United States for an alleged taking by the defendant of the plaintiff's home and chicken farm which was adjacent to the Greensboro, North Carolina, municipal airport, leased by the defendant for use as an Army and Navy air base. The taking complained of was caused by frequent flights of government aircraft at low altitudes while taking off and landing. The noise of the planes, and the glare of the landing lights at night made it impossible to use the land as a chicken farm, and the Court of Claims found that the plaintiff's property had depreciated in value as a result of this, and held that the United States had taken an easement in the airspace from the commencement of the lease, the value of which was \$2,000.00.² The Supreme Court sustained the Court of Claims as to the taking of an easement for which plaintiff should be compensated,³ but reversed the case in order that the nature of the easement

¹ *United States v. Causby*, 326 U. S. —, 66 Sup. Ct. 1062, 90 L. ed. 971 (1946). (Justices Black and Burton dissenting.)

² *Causby v. United States*, 60 F. Supp. 751 (Ct. Cl. 1945). (Judge Madden dissenting.)

³ This was not a taking of an easement by prescription, but an implied taking giving rise to a suit under the Tucker Act [24 STAT. 505 (1887), 28 U. S. C. §250(1) (1940)] which gives jurisdiction to the Court of Claims for actions against the United States ". . . founded upon the Constitution of the United States, . . . not sounding in tort. . . ." However, it would seem possible in the light of this