Defining Peaceful Picketing: The Michigan Supreme Court and the Labor Injunction, 1900-1940

Derifield
DEFINING PEACEFUL PICKETING: THE MICHIGAN SUPREME COURT AND THE LABOR INJUNCTION, 1900-1940

by

Coreen Derifield

A Thesis
Submitted to the
Faculty of The Graduate College
in partial fulfillment of the
requirements for the
Degree of Master of Arts
Department of History

Western Michigan University
Kalamazoo, Michigan
August 2005
In a ruling which would stand for nearly half a century, the Michigan Supreme Court decided in 1898 that pickets and boycotts were inherently violent activities, and declaring them illegal, the Court sanctioned the injunction to restrict their use during a strike. This thesis traces the Court’s rulings across these forty years, analyzing how these cases functioned, assessing their impact on union activity, and charting the role of the Michigan Supreme Court in legal procedure. Examining the Court’s rulings in three different geographic, social, and cultural environments from the early 1900s to the 1930s, the thesis argues that the Michigan Supreme Court provided a precedent which gave employers across the state an accessible and facile tool to use against a striking union. The ruling, while handicapping labor unions, added to the dominance of employers over labor in a political environment already favorable to business. Labor, however, was not defeated by this employers’ tool, and although the injunction severely handicapped a striking union, workers in several cases circumvented the restrictions of the order.
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>SECTION</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>INTRODUCTION</td>
<td>1</td>
</tr>
<tr>
<td>CHAPTER</td>
<td></td>
</tr>
<tr>
<td>I. Beck v. Railway Teamsters Protective Union</td>
<td>14</td>
</tr>
<tr>
<td>II. Baltic Mining Company v. Houghton Circuit Judge</td>
<td>49</td>
</tr>
<tr>
<td>III. Clarage v. Luphringer</td>
<td>80</td>
</tr>
<tr>
<td>IV. Book Tower Garage v. Local No. 415</td>
<td>100</td>
</tr>
<tr>
<td>BIBLIOGRAPHY</td>
<td>119</td>
</tr>
</tbody>
</table>
Although the study of the injunction has not featured prominently in recent scholarship on U. S. labor during the Progressive era, contemporary union activists regarded the injunction as a critical subject for debate and discussion. In 1906, for example, a Detroit editorialist declared that the question of the injunction was “the most important one before the working men and women of the country today.” Once a legal method used solely to provide protection to a person’s private property, the injunction took on a new meaning with the rise of trade unionism in the last three decades of the nineteenth century. The injunction became a means to prohibit strikers from picketing on an employer’s property and boycotting an employer’s business. The legal jurisprudence for resorting to such sweeping, restrictive measures fell under the doctrine of criminal conspiracy, which held that any group of people gathering or confederating together to implement any type of violent or intimidating action was illegal. According to this view, a labor union was an ideal candidate for conducting such illegal activity through their use of pickets and boycotts. This reasoning lay behind a high profile 1894 federal Circuit Court ruling in the case against Eugene V. Debs, leader of the American Railway Union strike at the Pullman Car Company. Debs appealed the federal Circuit Court’s interpretation of the injunction, but in 1895 the United States Supreme Court ruled against him. In re Debs ratified the new jurisprudence of criminal conspiracy and injunctions, affirming that the injunction should restrict pickets and boycotts. The labor
injunction soon spread across the country, becoming the most facile legal remedy for a disruptive strike.

By the end of the nineteenth century, this controversial legal method had reached the Michigan Supreme Court. In 1898 the court ruled in *Beck v. Railway Teamsters' Protective Union* that picketing and boycotting were violent, intimidating activities unfit for legal use. After the Court created this precedent in 1898, it reaffirmed the decision through nine different court cases from 1905 to 1922, even restricting picketing to the point where it was illegal for a striking union man to stand silently on an employers' property. Labor unions in Michigan fought this precedent through appeals, legislative initiatives, city council ordinances, political candidates, and flagrant disobedience; but none of these attempts served to change the Court's mind. It was not until 1940 that the Court finally reversed its opinion, ruling that picketing was no longer inherently violent and could be conducted peacefully.

*Beck v. Railway Teamsters' Protective Union* thus created a precedent which lasted for four decades, giving Michigan employers a guaranteed restraining order against any picketing on their property or boycotting of their businesses. This precedent had a lasting impact on labor in Michigan, constraining union activism in the years when the state emerged as a major center of manufacturing and granting business owners an open hand to practice what they deemed a *laissez faire* philosophy. These injunctions took away labor's two most dependable weapons in a strike, leaving them handicapped while the employers remained unscathed. Labor continued to face the injunction, even in peaceful situations, and it sapped their strength with protracted court battles and expensive legal fees. I argue that while the injunction tipped the balance in employers’
favor, adding to a political environment already pro-business and hostile to labor, it failed to defeat unionism in the state. Throughout these decades, union members mustered their strength to fight this weapon, using their creative ingenuity and human agency to challenge and trim the final authority of the injunctions’ restrictions.

Because of Michigan’s conservative state government and its growing industry, the state serves as an excellent environment in which to study the impact of state issued injunctions on the labor movement. The Michigan Supreme Court upheld these conservative views of the state government and allowed industry a free reign to conduct business. A highly respected court in the nation’s legal community, by 1898 the Court was ending its years of fame as the “Cooley Court” (1868 to 1875). The last member of that famed court left in 1890, and it maintained a reputation as a leader in legal scholarship. 3 During the early 1900s, while sustaining its national reputation as a legal authority, the Court held a conservative view of the law, especially toward labor law. That view held firm throughout the 1920s and into the 1930s. Only with the advent of the New Deal did the court begin to loosen its hold on some deeply-rooted, conservative precedents. By the 1940s, the Court held more progressive opinions toward labor law and especially toward labor unions. In this development, the Court reflected the state government’s evolution from conservatism to liberalism, as the Republican Party’s half-century dominance of both the Michigan legislature and the governorship ended in the mid-1930s. This long period of Republican dominance had allowed Michigan’s business owners a virtual free reign to conduct their businesses. As the state government changed in the 1930s, it became amenable to the liberal ideas of the New Deal and loosened from its staunch conservatism to allow unionism more rights.
Michigan’s economy transformed during the first half of the twentieth century into a national center of manufacturing. In 1895 the automobile was a new technological phenomenon, a device only the wealthy could afford. By 1910 Henry Ford had developed his Model T, and, via mass production methods and the reorganization of the work process, had brought the price of the car to an amount affordable to many Americans. Ford built his massive Highland Park Plant for the mass production of automobiles during the 1910s, and expanded his empire to the completed River Rouge plant in 1927. General Motors, Dodge, and Chrysler also accelerated auto and truck production, with factories cropping up all across the southeastern part of the state. These enormous factories pulled workers to their assembly lines from all over Michigan, the Midwest, the South, Mexico, Canada, and Europe. Migrants flooded into Detroit looking to earn the high wages the auto industry promised.

During these years the state not only became the center for auto production, but also a major center for unionism. Following the demise of the Knights of Labor in the 1890s, the American Federation of Labor (AFL) emerged as the leading union organization in the state. Composed of various craft or trade unions, the AFL had numerous locals throughout Michigan, with many cities sponsoring its own trades and labor council in affiliation with the AFL. At the turn of the century these local unions held several closed shop agreements with business owners, guaranteeing the employment of only union members. As employers’ across the state desired to rid themselves of the noisome closed shop, they formed employers’ associations and began an intense open shop drive. Many trade unions could not survive the onslaught and lost their closed shop agreements. Trade union power and influence not only declined because of the open
shop movement, but also because of the transformation of the work process in the early 1900s. Stuck under the divisions of their various trades, the AFL had no room for industrial workers who claimed no special craft or trade. Faced with the emergence of massive manufacturing in Michigan and the increase in unskilled labor, the AFL chose not to unionize these new workers, and, consequently, the AFL's locals lost authority in the factory.

Yet, while trade unionism declined in influence, the Industrial Workers of the World (IWW), championing a broad-based industrial union movement, made some headway into the emerging manufacturing industry but failed to attract a substantial following among autoworkers. Despite several failed attempts by the United Automobile, Aircraft and Vehicle Workers of America (a small trade union for auto workers) to unionize the autoworkers during the economic boom of the twenties, it was not until the 1930s that unionism in Michigan regained its power. Under the direction of the United Automobile Workers (UAW) and with the help of the Committee of Industrial Organization (CIO), workers throughout the auto industry were unionized after the passage of the Wagner Act, which guaranteed workers the right to collectively bargain. By 1945, almost every auto plant in the state had a union contract with its workers.

The state of Michigan thus affords a good environment in which to study the impact of the injunction on labor activism in the early twentieth century. Even while there have been several studies on injunctions or on the role of the state in labor, none have focused on the importance of state issued injunctions. This thesis helps fill these gaps in the historical record.
In part the thesis is informed by scholarship produced during the 1930s, when several scholars studied the injunction and its implications on unionism. In 1930 Nathan Greene and Felix Frankfurter, a preeminent legal scholar appointed to the United States Supreme Court in 1939, published *The Labor Injunction*, a study offering insightful critiques upon the use of the injunction as a tool for restriction. Two years later, Edwin Witte, who later served on the National Labor Relations Board, published a study on the role of the state in labor relations. Witte’s study devoted two chapters solely to the injunction, discussing the mechanics of an injunction procedure, showing the various ways an injunction was enforced, and evaluating whether the injunction succeeded in restricting labor unions. He concluded that the actual effectiveness of the injunction was quite ambiguous, and provided poignant insights to the fickle applicability of the injunction. Witte argued that the injunction, while intending to restrict acts of violence, did not have “any real value in preserving law and order.” Instead he maintained “Injunctions do not make acts of violence or intimidation any more unlawful than they are without such orders.” More recent scholars, who have considered the injunction have overlooked Witte’s insights, analyzing national leaders and large trends, but not taking into account the grass roots impact of an injunction.

Recent legal scholars William Forbath and Victoria Hattam, have assessed the importance of the courts in the development of the labor movement. Forbath argued that the courts were instrumental in shaping the policies of the AFL and their philosophy of voluntaristic unionism. Hattam also analyzed the role of the courts in the labor movement, arguing that because of the court’s restrictive rulings toward labor the AFL resorted to voluntarism and business unionism. Both discussed the labor injunction, but
focused on it as a broadly defined threat to unionism and did not examine specific local cases or cases dealing with state supreme courts.5

The broader topic of the role of the state in the labor movement, in contrast, has attracted a growing scholarly attention, with impressive results. Julie Greene’s study of union leaders’ political activism during the Progressive era demonstrated how the injunction pushed labor leaders into politics, particularly at the local level. Melvyn Dubofsky also assessed the importance of the state but focused on the national level, both in politics and unionism. Nevertheless Dubofsky recognized the importance of the local level, concluding that, “before the era of the New Deal, state and local governments probably had a greater impact on workers and unions than the federal government did.”6 His study provided key insights into the changing nature of the state’s involvement in labor during the twentieth century.

Historian Thomas Clark tackled the importance of the injunction at a state and local level, arguing that many studies had “focused too much on federal courts, or when considering local and state developments, on how the law shaped the thinking of Samuel Gompers and the national leadership of the AFL.” Clark showed that “when one turns to state and local levels—the most likely sites of labor’s legal encounters before the 1930s—the story is much more complex.” Clark focused on California, using the cities of Los Angeles and San Francisco as places for analysis, and argued that state intervention in labor disputes, particularly in the form of the labor injunction, drove local union leaders into politics. Clark ratified Julie Greene’s analysis on labor politics and her assessment on the injunction. He concluded that in California “legal hostility pushed labor into politics with great urgency, both to defend labor’s rights of collective action
and to sponsor an ambitious program of social reform." His pioneering work provided a more grass-roots analysis on the injunction and a more well-rounded viewpoint on the role of the state in labor. 7

Much like Clark's study, this thesis analyzes the role of the injunction in a state and local setting, showing the importance of the Michigan Supreme Court's precedent in a grass-roots analysis. Yet, while Clark studied the importance of the state and local government's involvement in labor, I focus on the role of the injunction. The thesis analyzes how these injunctions functioned, assesses their impact on union activity, surveys various reactions to the injunction and charts the role of the Michigan Supreme Court in legal procedure. The thesis demonstrates that the injunction worked only on occasion and that its effectiveness depended upon a complex set of circumstances, sometimes affording workers the flexibility to maneuver around the authority of the injunction. This study also offers a view of the inner workings of the court system and analyzes the Michigan Supreme Court within an institutional framework. I show how the court system worked as a fluid institution, influencing each level in decisions and in legal theory, as it interacted not only from the top, the United States Supreme Court, down to the circuit courts, but also from the circuit courts to the Supreme Court. The chapters of the thesis proceed chronologically and are organized around a series of key Michigan Supreme Court injunction rulings. The thesis thus provides a mosaic of different scenes in which to study the role of the injunction.

Chapter One focuses on the setting of the precedent with the ruling  Beck v.  

Railway Teamsters etc. (1898). It analyzes the legal influences in the court's decisions, the way labor initially reacted, and the combative measures labor leaders undertook to
defeat the ruling. The chapter also studies the three Michigan Supreme Court injunction cases immediately following the setting of the precedent, showing the continued responses of the trade unionists in Detroit and the ways in which unionists increased their reliance on other methods, such as local politics and the union label, to combat employers in Detroit. This analysis shows that the injunction had damaging effects: even though the injunction rarely broke a strike, it weakened labor's resolve to fight in a strike. The Michigan Supreme Court's ruling and the increase in injunctions helped employers gain the open shop in Detroit, a policy that lasted until the 1930s. Last, this chapter shows the how the Michigan Supreme Court forced local judges to follow its precedent.

Chapter Two focuses on the important role of the injunction during the dramatic copper mining strike in Michigan's rugged Upper Peninsula. In 1913 several mine owners endeavored to gain an injunction to stop the picketing and parading of the striking mine workers. Their plans were initially foiled when the local circuit judge, sympathetic to the miners' strike, refused to issue the injunction and the mine managers turned to the Michigan Supreme Court and the precedent set by Beck v. Railway Teamsters' etc. to gain their injunction. The Court ruled in Baltic Mining Company v. Houghton Circuit Judge that the local judge must issue the injunction, and it expanded the restrictions of the injunction to include parades under the injunction. While striving four months to gain this injunction, mine owners were disappointed when it failed to render the desired goal of ceasing the strikers' activities. This chapter provides an opportunity to examine the reasons why an injunction failed to work.

Chapter Three focuses on an injunction case far different from that of the miners' strike both in physical and cultural space. In 1916, a group of peaceful, law-abiding
machinists went on strike in the city of Kalamazoo. These men conducted picketing peacefully, but despite the quiet nature of the pickets, the company owner sought an injunction to stop their picketing. When the injunction was issued, the strike ended, but the machinists' union appealed the injunction to the Michigan Supreme Court, challenging the very basis of the *Beck* decision. The Court, disagreed with the union and reaffirmed its precedent. This case shows that the injunction had the power to help break a strike, offering an analysis on the factors which caused an injunction to work. It similarly provides an example of the importance of *Beck* as a precedent, and labor's futile attempts to uproot it.

The last chapter discusses the Court's overturning of its precedent in 1940, and shows how legal jurisprudence on injunctions and picketing had changed. In the wake of the dramatic upsurge of unionism in Detroit during the 1930s, local judges began to view picketing as a legal activity. The concept of peaceful picketing swept through the circuit court of Wayne County, and judges began to allow a set number of pickets at a place of business. In 1940, when one angry company owner wanted all pickets eliminated from his place of business, he appealed to the Michigan Supreme Court. To his surprise and to that of many employers and trade unionists, the Court agreed with the circuit court judge. After confronting the massive labor triumphs of the UAW and other CIO unions in the previous five years, the court realized that the social definition of picketing had changed. The Court belatedly brought its decision in accord with the national jurisprudence, and reversed the *Beck* precedent. This chapter not only shows the dramatic change in precedent, but also shows how outside institutional influences can impact the Court in their decisions.
By showing how an injunction, even one issued by a state Supreme Court, only worked intermittently, I argue that the most damaging influence the injunction had on labor in Michigan was its accessibility to employers. Whether the injunction broke a strike or failed to create the peace employers sought, the Michigan Supreme Court’s precedent guaranteed its accessibility, granting employers a quick restraining order whenever a strike arose. Labor fought this precedent with only limited success, unable to persuade the conservative Michigan State Legislature to create a ban on injunctions or convince the Michigan Supreme Court to change its mind. But labor was not defeated. Unions were simply handicapped as they endeavored to remain peaceful, law-abiding citizens while fighting employers’ attempts to take that stature away from them. As labor faced these ubiquitous court rulings, they sought various means to combat employers and win their rights. Labor saw their final victory over the Michigan Supreme Court in 1940 when the Court ruled that peaceful picketing was legal and overturned its precedent.
Notes


3 Commonly known as the “Big Four” the Cooley court consisted of James Campbell, Isaac Christiancy, Benjamin Graves, and Thomas Cooley. These four men brought the Michigan Supreme Court from an unstable, newly created court to a highly reputable court of law. Thomas Cooley, once the Dean of the University of Michigan Law School, was the most well known of these jurists. Cooley was known for his vast publications on the law and his well-written court opinions. The last member of the Big Four left the court in 1890, leaving a thirty–year legacy of outstanding legal scholarship. For more information on the Cooley Court, see: [http://www.micourthistory.org/resources/bigfour.php](http://www.micourthistory.org/resources/bigfour.php).


The labor injunction, a legal controversy spreading across the nation in the late 1800s, became a grave threat to many trade unions, taking away the use of pickets and boycotts in a strike, two of labors’ most formidable weapons. The legal restriction of trade unions began as early as 1842 when Chief Justice Shaw of the Massachusetts Supreme Court formulated the legal doctrine of criminal conspiracy. This doctrine held that it was illegal for a group of people, especially workers, to use any form of violent or intimidating measures.\(^1\) As the precursor to the injunction, it began the legal jurisprudence of viewing labor’s activities as inherently coercive behavior and laid the legal foundation for the injunction. Even though the initial legal intention of the injunction was to protect private property, in the 1880s the courts broadened the definition of property to mean anything from a sound, tangible object to the abstract ideal of a person’s labor or business. Through the case, *In re Debs*, in 1895 the United States Supreme Court ratified the injunction for the first time.\(^2\) This opened the door for lower federal courts, state supreme courts, and district circuit courts to use the injunction to restrict pickets, boycotts, and strikes. Even though laws differed from state to state, the state supreme courts followed the example of the United States Supreme Court and issued wide, sweeping injunctions which shocked and dismayed many trade unionists.\(^3\)
With this verification by the Supreme Court and an all-encompassing definition of property, courts issued several thousand injunctions between 1880 and 1930.4

By 1898 as the Michigan Supreme Court approached its own ruling on injunctions, it depended upon a wealth of established court rulings on injunctions. Composed of four elected men from across the state of Michigan, the Court II maintained an outstanding reputation as an esteemed court of law. Their own decision on the injunction would reflect their upstanding legal reputation, their regard for business owners, and the growing conservative jurisprudence on the right of property. And when the Court gave its restrictive ruling, outlawing all picketing and boycotting, it became a friend to all employers across the state by handing them a powerful tool against the burgeoning trade unionism. As the precedent was established, it served to alter gravely the ability of a union to conduct a strike. The decision was to have serious impact upon the growth of trade unionism in the state, especially in the city of Detroit where organized labor was beginning to flourish.

Turn of the century Detroit serves as an excellent environment for this examination, with its booming population, growing industry, and a sturdy central trade unionist organization. With Detroit's enviable geographic location on the Detroit River and a population of 285,000 in 1900, the city became an increasingly conducive spot for industry. On the verge of a tremendous boom in population and in manufacturing, Detroit had many leading industries before becoming the car capital of the world. It was a center for carriage making, stove manufacturing, cigar making, and metal- working, with several leading industries employing as many as two thousand workers. These
growing industries relied on several trades to support production, especially in the metal and construction.\(^5\)

The Detroit Trades Council emerged as the city’s central labor organization, after the collapse of the Knights of Labor in the early 1890s. The Detroit Trades Council, affiliated with the American Federation of Labor (AFL), picked up the remnants of the Knights of Labor and continued the activity of trade unionism. In the early 1900s, the council experienced a surge in membership, increasing from 8,000 in 1901 to 14,000 in 1904, this increase in membership facilitated the proliferation of the closed shop contract.\(^6\)

To thwart this union growth and undermine the closed shop contract, several of Detroit’s leading employers formed the Employers’ Association of Detroit in 1902. Shortly after formation and under the direction of John Whirl, they instigated an open shop drive by refusing to renew their closed shop policies, locking out workers at large factories and seeking injunctions to restrict boycotts and pickets during a strike. The Detroit Trades Council fought to maintain a hold upon their closed shop agreements in 1906, attempting to consolidate their strength by reorganizing themselves with a local branch of the national AFL. But by the end of 1907, the employers had defeated the closed shop, making several unions sign open shop policies, and causing the tradesmen to lose control over their craft labor market. By 1911, less than nine percent of Detroit’s rapidly expanding workforce was unionized.\(^7\)

The Michigan Supreme Court’s precedent thus came at a crucial time for Detroit, as unionism was declining and employer power was expanding. This chapter shows that the injunction did not defeat unionism, as labor found ways to usurp the injunction’s
power and authority. Unions manifested this maneuvering in several ways, but most importantly, it was shown through labor’s increased involvement in politics. Even though the Detroit Trades Council heralded its abstention from political endorsement, the injunction in many ways drove them to political activity. With a completely non-partisan endorsement, union members campaigned for those judges favorable toward labor and sought legislative restrictions to the injunction. As labor faced this new threat by the state, and even as the injunction bound labor in a net of legal illegitimacy, unions sought and found ways to trim the threads of the state’s final authority over their tactics for mobilization. 8

At the turn of the twentieth-century, Jacob Beck and his son George, Ontarian immigrants to Detroit, ran a milling business located on West Congress Street near the Detroit River. George Beck was the head of the family mill by 1897 and was an important businessman in the city and a leader in the local Republican Party. Among the employees at this thriving mill were several teamsters who hauled the grain. In July 1897, five of these teamsters—Michael Walpole, H. McHugh, C. Fox, W. Pfaff, and Edward Hopp—approached George Beck with a contract certifying a wage scale and a closed shop policy with the Railway Teamsters’ Protective Union. Beck refused to sign the agreement, arguing that he wanted complete control over his own business. He sent the five teamsters’ horses to the country for the rest of the summer, putting the men out of work. He then hired another company to do the hauling.9

On August 1897, George Innis, a delegate for the Railway Teamsters’ Protective Union, along with several members of the Detroit Trades Council launched a boycott
against the mill. The union men swarmed the grounds of the mill and passed out boycott circulars to customers and non-striking employees. When George Beck approached the scene, someone in the crowd yelled, “Here is a rope. Hang Beck with that.” After this event, Beck notified the police to contain the crowd and to prevent any violence. After about a week of the strike, Innis and the officers of the Detroit Trades Council confronted Beck once again about the contract. Beck still refused to sign the wage scale but promised to notify trades council when he had brought the horses back from the country. This agreement pacified Innis and the Council and they temporarily called off the strike. As the five men who originally sought the wage-contract were thrown out of work by this agreement, they decided to quit the union and went back to work for Beck.  

On October 23, 1897, Beck notified George Innis that the horses had returned from the country and the teamsters would return to work in two days. A week later, Innis and the Detroit Trades Council again approached Beck about the contract. Beck adamantly refused to sign and insisted he would conduct his own business the way he saw fit. The officers of the Council with equal vehemence declared that they would ruin Beck’s business as they had already ruined a prosperous employer in the city. The strike promptly resumed, and the striking teamsters soon set up pickets around the mill. The pickets passed out circulars to potential customers asking them to boycott Beck. The circular pleaded for “all people who believe in living wages and fair treatment of employees to leave this firm and their product severely alone.” While several men were on strike at Beck, only one of the original striking teamsters went out on strike. The other four refused to join, citing their disappointment with the union as their reason.
Thoroughly annoyed at the chaotic situation at his mill and concerned about the money he was losing, Beck filed a bill of complaint requesting a preliminary injunction to Judge Hosmer at the Wayne County Circuit Court. The bill cited the organized nature of the union, its use of threats and intimidation, and the injury they were causing to his business. Judge Hosmer promptly issued a preliminary injunction restraining the union men from any type of violence, including picketing and distributing boycott circulars. When they received the injunction papers on November 3, 1897, the striking men were dismayed over the order’s harsh restrictions. Judge Hosmer requested the men to appear in court the next day in order to begin the hearings for a permanent injunction.

The council called an emergency meeting to discuss the sweeping measures of the injunction. One member at the meeting contended that, “If this injunction is made permanent it practically destroys organized labor. If we are to be prohibited from using peaceful measures, the last weapon of defense against abject wage slavery will be taken from us.” The Council concluded that the injunction was one the most serious challenges they had faced and that they must fight against it arguing that “the last dollar in the power of the organization… should be expended in a contest to prevent the injunction.” Many trade unions affiliated with the Detroit Trades Council rallied around the cause, offering money and moral support. They knew that the injunction was a dire threat to all of labor, not just the Railway Teamsters’ Protective Union. In a meeting of the council later in the month, the typographical union pledged one dollar per member in support of the fight against the injunction case. The central labor union also pledged support, charging $1 to $2 per member in support of the fight.
After the hearings, Judge Hosmer issued a permanent injunction on November 29, 1898 restricting the union members from any form of violence. The judge did decide, however, to include the boycott in the decree. The Detroit Trades Council and the Teamsters' union were overjoyed to learn that they could keep the boycott in effect against Jacob Beck and Sons. Feeling the financial strain the boycott put on his business, George Beck appealed to the Michigan Supreme Court and requested that the boycott be included in the injunction.\textsuperscript{16}

Members of the Council and the general labor community were optimistic about their upcoming legal fight in the Michigan Supreme Court. One editorial in the labor newspaper the \textit{Detroit Sentinel} questioned, “Now let us see what our own Supreme Court has to say about the subject. Yes, by all means, let the case go to the highest court in the state, if need be.” The Trades Council lauded Judge Hosmer for his decision and made him a hero of trade unionism. The \textit{Detroit Sentinel} reflected this fondness in an interesting anecdote:

“Attorney Douglas for Jacob Beck & Sons, at the hearing of arguments in the law library last Tuesday morning was seen to suddenly brighten up, a kind –of –a –happy –thought-expression (sic.) illuminated his face, and very impressively he asked Judge Hosmer, ‘Now Judge, suppose you were a candidate for office and about 400 or 500 members of the Hatters Union came to you and said to you that unless you buy one of our kind of hats we’ll refuse to vote for you, what would you do? Judge (Hosmer) in his quiet, suave manner replied ‘Why I’d buy the hats.’”\textsuperscript{17}

The Railway Teamsters Protective Union and the Detroit Trades Council maintained the boycott until at least the end of May 1899, after which there was no
mention of it in their newspaper the *Detroit Sentinel*. The Detroit Trades Council’s yearly report included a final summary of the dramatic events concerning the boycott of Jacob Beck & Sons: “During the year has occurred a strike which, if estimated only by the number of men involved, would be regarded as of minor importance. Its history, however, proves it to have been one of far reaching importance, not only to the union directly interested, but also to the Council and the entire trade union movement.” This strike definitely had historic proportions, but the Council had yet to see how far they went.\(^1\)

The case went to the Michigan Supreme Court on June 15, 1898. Claudius B. Grant, Chief Justice of the Michigan Supreme Court, wrote the lengthy opinion to the landmark case *Beck v. Railway Teamsters’ Protective Union*. Remembered as a “colorful and outspoken member” Grant was an elected member of the Court for twenty years. An esteemed Civil War veteran, he “seemed to demand a fearful respect from all those he encountered.”\(^1\) Grant began his opinion with a detailed description of the rowdy conduct of the striking men. Only after Grant verified the need for an injunction did he compose his methodical legal opinion, employing the legal reasoning commonly found in judicial opinions on injunction cases. He argued that the court needed to restrain any type of conspiracy when it caused irreparable harm to business. Thus, “even covert and unspoken threats may be just as effective as spoken threats” when these threats menaced the financial existence of business. Grant argued that pickets were illegal because, by definition of Webster’s Dictionary, they were inherently violent. He then asked, “May these powerful organizations thus trample with impunity upon the right of every citizen to buy and sell his goods or labor as he chooses? This is not a question of competition,
but rather an attempt to stifle competition. It is a question of the right to exist. If there be no redress from such wrongs, then the government is impotent indeed.” Grant concluded that the boycott was illegal as well, and injunctions, by proof of precedent, were viable means for restraining these “conspiracies.” The injunction decree was modified “to enjoin picketing, the distribution of the boycott circular, and all acts of intimidation and coercion.” The other three justices of the Court agreed with this opinion, and the precedent on picketing was set.20

When the report of the Michigan Supreme Court’s decision reached the Detroit labor movement on November 18, 1898, panic and despair resulted. One editorial captured this feeling, stating that it was “Another nail driven in the coffin of labor. The Supreme Court steps in and with blanket interpretation of intention, converts the right to speak, write, publish, or even to think into threats of violence, intimidation and coercion. Does this mean that we must stop thinking? If it does, bow down humble workingman…the Supreme Court has ordained and in order to be a loyal citizen you must submit.” The Detroit Trades Council wondered how to proceed under the sweeping ruling. David Inglis, President of Direct Legislation Committee, advocated that the unions of Detroit and all of Michigan should offer a bill of direct legislation which would force the current judges to leave the bench all at the same time. “It might be possible to put on the supreme bench a new lot of judges who would all come fresh from the people. They would feel a responsibility to the people, which they do not feel now.”21

With the boycott illegal, the Council turned to the union label as a substitute. They formed a committee to disseminate information about the union label as well as to garner more support from the community. They created a calendar of union labels and
distributed approximately 5,000 of them, and they passed out several thousand copies of
the newsletter the "Union Label Appeal." The Council also sought to educate the public
against the evils of the injunction and distributed a pamphlet entitled, "The appeal of
United Labor against Government by Injunction."\textsuperscript{22}

The Council also cultivated a haughty defiance toward the Supreme Court, often
making sneers or disparaging remarks toward the Court. For example, at a meeting in
January 1899 the Council discussed possibly supporting a boycott against a brewing
company because it used a boycotted type of malt in their beer. William Campbell of the
Pattern Makers Union, a delegate known for his girth, "suggested that here was the
opportunity for the workingmen of Detroit to get even with the Supreme Court by
refusing to drink beer made of the boycotted stuff." The Council notes recorded
Campbell stating that, "If I can stand it, I'm sure most of you skinny fellows can." The
Council considered this a "noble sacrifice on the part of the Falstaffian delegate and he
was loudly applauded for his effort." But this defiance was even more evident in the
spring when the council began a tremendous effort to keep Claudius B. Grant from re-
election to the Court.\textsuperscript{23}

Grant wrote the opinion to the \textit{Beck} case and was the only Michigan Supreme
Court justice up for re-election that spring, and the Council made a strenuous effort to
ensure that every working man of Detroit would not vote for Grant. In February, a
member of the Detroit Trades Council recorded the number of Judge Grant's rulings in
favor of the corporations and those in favor of the people. The final score was
"Corporations: 168, the people: 19". The council concluded with this tabulation that, "It
now remains with members of organized labor and their friends to see to it that neither he

23
nor another has an opportunity to repeat such a record. You can change it by retiring the
gentleman and putting someone in his place.” When Grant received the Republican
Party’s nomination, an editorial in the *Detroit Sentinel* commented that “Grant, the friend
of the corporation and the enemy of the masses is (the Republican Party’s) standard-
bearer, and the only thing left for the workers of Michigan to do is to …nominate Judge
Hosmer, in opposition to Grant as the guardian of the common people’s rights and go
forth and elect him.”24 In a March meeting of the Detroit Trades Council, the members
emphatically concluded they would not spare any expense to see his defeat. They
distributed a circular to all of the workingmen of Michigan telling of Judge Grant’s
 corporate favoritism. George Innis, now president of the Council said, “The decision
written by Justice Grant in the Jacob Beck & Sons boycott case was a direct slap in the
face of organized labor, and that it is our duty to resent the insult.”

Despite all this campaigning, Grant had every prospect of winning re-election,
and did so handedly on April 3, 1899. After weeks of campaigning to defeat him the
council was bitterly disappointed. The *Sentinel* recorded one editorial against the Court,
which also displayed the idealistic belief in labor’s eventual success. “In conclusion, it
is safe to assure all concerned that this ‘perverse crowd’ (labor unions) will continue to
grow until it reaches such proportions that it can place men in high places in this country
who have some regard for the common rights of the people.”25

Even though the Council had a voice in politics in the local community, they were
unable to effectively mobilize labor outside of the city. Partially due to the geographic
location of Detroit, situated in the remote southeast corner of the state, Detroit’s labor did
not adequately motivate or convince the rest of the state to keep Grant from re-election.
The Detroit Trades Council needed statewide lobbying power if they were going to succeed in pressing its demands on a state institution such as the Supreme Court. After this dismal failure, the Detroit Trades Council turned to other methods to combat the injunction, one of them being the law itself.

The second injunction case involved the trade unions attempt at finding a legal loophole against the injunction. This injunction began with the United States Heater Company, a prominent manufacturing business in the city of Detroit located on Campbell Ave and owned by George Ducharme. The Iron Molders Union, an affiliate of the Detroit Trades Council, was a mainstay in the company, having approximately twenty-five to thirty molders members of the union. In April 1901, under the direction of James Roach the third vice president of the Iron Molders’ Union, the union men requested a closed shop contract with the company, and when the Company demurred, the iron molders went on strike. They set up pickets around the factory, implemented a boycott, and tried to persuade other men to join their strike.26

The strike lasted for months, maintaining a large crowd around the factory and causing those still employed seek the Detroit Police Department as a permanent escort to work. Union activity escalated in July, when a group of strikers blocked the entrance to the factory and threatened to throw bricks and stones at any iron molder still working. Worried about their safety, twenty-five of these non-union men quit the company. After the loss of these men, the Company felt the strain of the strike on their pocket book, and they turned to the Wayne County Circuit Court for an injunction.27

The United States Heater Company enlisted the help of Bowen, Douglas & Whiting, the law firm known for its victory in the Beck case. Judge Hosmer, once the
hero of the trade unionist, readily granted the preliminary injunction. Although Judge Hosmer was once hesitant to issue these sweeping injunctions, due to the Michigan Supreme Court’s decision in \textit{Beck}, he complied with the precedent and the change in the legal environment. Hosmer requested, along with the injunction, for the union members to appear in court for hearings over a permanent injunction. The union turned to Attorney James Pound to defend them in the up-coming court battle. Since the campaign to keep Chief Justice Grant from re-election failed so miserably, the Detroit Trades Council decided to try a legal method to get around the injunction. During the hearings for the permanent injunction, Pound submitted a plea stating that because the union was a voluntary association, Judge Hosmer could not subject the entire union to any sort of legal suit, including injunctions. The United States Heater Company needed to list every single name of the union members on the bill of complaint in order to legally obtain the injunction. Judge Hosmer denied the plea and sighted an 1897 Michigan Statute, which stated that a voluntary association could be subject to a legal suit. Pound appealed this denial to the Michigan Supreme Court on the basis that the Michigan statute was unconstitutional.  

Justice Joseph Moore, part of the decision in \textit{Beck}, penned the unanimous decision of the Court in \textit{United State’s Heater Company v. Iron Molders’ Union}. Moore denied their plea for two reasons. First, he argued that because the appeal was not made from a final, permanent decree it was not a viable appeal. Second, Moore tackled Pound’s accusation that the Michigan statute was unconstitutional because it was only for organized labor and not for any other type of voluntary association. Moore dismissed the appeal and affirmed the action of the lower court. This case not only demonstrated the
influence of Beck as a precedent, but it revealed the difficulty of finding a method within the law for labor to escape the restrictive borders of the injunction. Labor would have to rely on other methods in order to undermine the final authority of the injunction.

Shortly after the conclusion of the United States Heater Company case, several of Detroit's manufacturing employers decided to end the predominance of labor's closed shop policy. In December 1902 they formed the Employers' Association of Detroit, and after formulating an intricate plan to end the closed shop they launched an open shop drive in early 1904. These employers refused to sign close shop contracts with unions, started lockouts with union men, hired non-union workers as replacements, created a blacklist of non-compliant union members, and used the court injunction as a means to keep striking union members off their property. The Michigan Supreme Court's precedent on injunctions came at an opportune time for the employers, affording them ready access to the injunction. A dramatic court battle in early 1905 illustrated the new role the injunction took in the unfolding battle for the open shop.

In late January 1905, the Ideal Manufacturing Company, located on 570 Franklin Street and a member of the Employers' Association, desired to tear up the closed shop contract they currently held with the Metal Polishers Union and hire non-union men. When some of the metal polishers at the factory complained about the new non-union workers, the company locked the metal polishers out of the plant. The metal polishers proceeded to launch a full-scale strike: establishing pickets around the plant and implementing a boycott. The Ideal Company, alleging the "threatening" nature of the pickets, sought an injunction at the Wayne County Circuit Court. Ideal hired George
Monaghan, the Employers’ Association’s attorney, to obtain their injunction, and on February 10, he submitted to Judge Donovan a bill of complaint requesting an injunction.

Judge Donovan was one of the few judges in Detroit who was sympathetic toward union men and frequently gave special lectures on labor law at union meetings and special events. When Monaghan submitted the very lengthy bill of complaint, Donovan said he was unable to read it because of an infection in his eyes. Instead, Donovan issued a show cause order, stating “it is so difficult to make men of that character, men who have become a little inflamed, comprehend and understand the full meaning of an injunction.” This show cause would enable the union men to defend themselves in court and in addition receive a thorough explanation of the legal obligations of an injunction. Monaghan, his heart set on the inclusive injunction, was furious at Donovan’s decision and the next day he appealed to the Michigan Supreme Court, to compel Donovan to issue the injunction.31

The Court decided in *Ideal Manufacturing Company v. Wayne Circuit Judge* that if the judge had reflected the discretion of proper legal practice the Supreme Court would not interfere; however, “The purpose of the respondent was not to issue an order to show cause for the purpose of ascertaining the truth or falsity of the allegations in the bill and affidavits, but rather for the purpose of bringing in the defendants, in order that respondent might instruct them as to their duties, and thus pour oil on troubled waters.” On February 14, the Court issued a writ of mandamus, stating that the judge must order the preliminary injunction, which was to stay in effect until the hearings on Donovan’s show cause order began. Donovan, under direct orders from the Michigan Supreme Court, immediately issued the injunction.32
Later that week the hearings for Donovan’s show cause order began. But even before the hearings got under way, Monaghan filed another bill of complaint to Judge Donovan. He argued that several striking metal polishers had violated the preliminary injunction and should be tried for contempt of court. Despite Monaghan’s persistence, Donovan decided to wait until after the show cause hearings were completed before issuing any charges for contempt. Once again the insistent Monaghan ran to the state Supreme Court. The Court then issued its own show cause order requiring Donovan to appear in Court and explain why he did not charge the metal polishers for contempt. Donovan received this order just as the union show cause hearings were coming to a close.33

After five days of heated court hearings, with the Detroit Times calling them “a regular bombardment of oratorical pyrotechnics,” the case came to a dramatic end on March 1, 1905. As Monaghan’s tenuous case began to fall apart and before the union men were allowed to defend themselves in court against the harsh accusations made against them, Monaghan declared that the Ideal Company was withdrawing the case. Monaghan’s melodramatic announcement flabbergasted Judge Donovan as he responded: “These union men have been slandered. You have cast aspersions upon all these honest working men and you will be compelled to go on and finish your case or they must have a chance to come on this stand and tell their stories.” But attorney Weadock, who was working with Monaghan on the case, announced that they had the legal right to withdraw if they choose too. “I thought it would come to this,” Donovan replied bitterly, “The Ideal Company had no case anyway, no case at all, and I thought this had degenerated into a fight between the laboring man and the...association of employers.”34
Despite the withdrawal, Donovan allowed the attorney for the Metal Polishers’ Union, Frank Dohany, to offer a closing statement. Dohany took the proffered opportunity to denounce the Employers’ Association: “There is no more nefarious concern—no greater conspiracy than this Employers’ Association. It has but one object: To prevent any union man from obtaining employment in Detroit. We would have exposed this whole disreputable movement in this court.” Furious, Monaghan rushed to defend the Employers’ Association. Before he could utter a word, however, Judge Donovan cut him short: “I don’t care to put anything you say on the record. I don’t care to hear you at all. This case will be dismissed and the temporary injunction is dissolved.”

Turning to the Michigan Supreme Court show cause order he had received just that day Donovan cited: “I have been ordered to appear before a higher Court, it may be by misrepresentation, I don’t know.” Attorney Weadock took offense to this remark, and told the Judge that he had no right to say this, and threatened that his time on the bench would be short. The Judge retorted: “My time will be short!? Your time will be short if you’re not more careful. I don’t want any more remarks like that from you.” Donovan stopped just short of throwing him in jail for contempt. 35

Judge Donovan then issued a formal decree of dismissal of the case shortly after he had adjourned the court. Later that same day, Monaghan approached Judge Mandell, another judge on the Wayne County Circuit Court, with an affidavit requesting an injunction. Mandell decided that since the bill of complaint was almost identical with the one submitted to Donovan, the case should be tried before the entire panel of judges on the Wayne County Circuit Court. Thus, on March 3, the entire circuit court sat to hear the arguments of the case. They decided that “Judge Donovan had jurisdiction both as to
subject matter and as to parties. Beyond this, he had the power to determine the effect of
the voluntary dismissal of the bill before him and to enter the proper order or decree
thereon. It may be that he has erred in his decision, as the effect of the dismissal, but it
would not be proper for another judge of this court to so hold.” Therefore, Monaghan
needed to issue a completely new affidavit or appeal to the Michigan Supreme Court.
Monaghan decided to appeal and put the case before the Supreme Court, but because
Monaghan and the Ideal Company had voluntarily withdrawn the case without the
permission of Judge Donovan, they could not re-issue another bill until Donovan gave
them permission to do so. The Supreme Court denied the appeal.36

Shortly after this denial, the Michigan Supreme Court heard the show cause case
against Judge Donovan. Because of the trouble with his eyes and under doctor’s orders
not to strain them, Donovan showed that he was unable to read the long bill of complaint
He also stated that during the case the Ideal Company presented some arguments which
were simply not true, and for these reasons he did not try the union men for contempt of
court. Attorney Weadock attempted to defend his client’s case against the Judge’s
accusations, but because in a court of law you cannot call a judge a liar, the Court
dismissed his objections. Consequently, the Court refrained from issuing a writ of
mandamus and sustained Donovan’s decision.37 Despite this string of embarrassing
defeats, Monaghan finally got his injunction on April 7, 1905 when Judge Hosmer issued
a temporary injunction against the union men. Monaghan obtained this injunction by
submitting a completely new bill of complaint encasing a completely different set of
circumstances than the one previously debated over. This finally gave the police official
power to clear the men off the property of the factory.
This string of cases aptly illustrated the technical difficulty of injunction cases. It also showed how an injunction could become a rallying point for both the Employers' Association and the unions. The entire episode was complicated even further by the fact that Judge Donovan was up for re-election to the Circuit Court in the middle of April, and with labor's vote, he won re-election. The story of his campaign became a source of political commentary for both employers and labor. Donovan's campaign was the reason Attorney Weadock muttered in court on March 1 "you're time is short here." The Employers' Association and those in favor of the Ideal Company questioned Judge Donovan's decision, asserting that the only reason he denied the injunction was to gain labor's vote in the election. In a lengthy editorial, the Detroit Free Press, the city's pro-business paper, stated that "What he (Judge Donovan) assumed he would gain was the sympathy and the political support of the union labor element and to gain it he was willing to pervert the functions of the office he holds. A pricking conscience would have induced him to pass the case to another judge if he had been prompted by proper motives." George Eastman, the labor journalist for the Detroit Times, came to Judge Donovan's defense, arguing; "It would appear that if Judge Donovan was recognized as an implacable foe to those corporations who seek to destroy organized labor by the too often abused injunction method, to bring up this case before election, would give opportunity for his enemies to discredit him as a judge by this cry of 'politics' and 'prejudice'."38

The Judge Donovan's re-election campaign also caused a heated debate in the Detroit Trades Council. Many members wanted to endorse Donovan for re-election, but because the Council's official policy was to avoid partisan politics, the Council was
hesitant to do so. Nevertheless, many workers whole-heartedly rallied around Judge Donovan, lauding him as a fair and just judge who took the side of the working man. On election day labor turned out full force and re-elected Donovan to the circuit court. Thus, the injunction rallied Detroit's working men to cast their votes for a judge who supported labor. This case provides an interesting contrast to the Council's earlier campaign to keep Grant from re-election, and shows how labor was able to politically mobilize the local community but failed to effectively influence the state level.

Meanwhile outside the courtroom, the strike at the Ideal Manufacturing Company continued for another year and a half. In May 1906, the striking metal polishers' increased the intensity of their strike, men once again surrounding the plant and attempting to persuade the non-union employees to quit. The business agent for the Metal Polishers' Union, Ben Stouder, contended that these pickets were legal, as they stayed within the measures of the injunction issued by Judge Hosmer in April of 1905. The Detroit police did not agree and in early June, police officers arrested several men for interfering with employees at the Ideal Company. Martin Ludwig, John Eagan, and Charles Hamlin appeared before Judges Brooke and Mandell of the Wayne County Circuit Court on orders of contempt of court. George Monaghan was back, accusing Martin Ludwig of stating "Well I see you're still doing your dirty work." to the Ideal employee Bert Brown. Ludwig denied this charge, stating that his exact words were, "I see you have not kept your promise to join union." Ludwig also denied ever violating the injunction. The Court convicted Ludwig with contempt of court and sentenced him to ten days in jail. He paid the expensive $300 bond and appealed to the Michigan Supreme Court.
The strike between the Metal Polishers' Union and the Ideal Manufacturing Company was finally settled in late August of 1906 and the Polishers went back to work for the company. The case of Martin Ludwig was still pending, and the Court did not issue an opinion until July 2, 1907. Justice Grant, still on the Court, wrote the opinion for *Ideal Manufacturing Co. v. Ludwig*, and stated that "The attitude of the crowd composed of union men was hostile, threatening, and intended to intimidate. The claim that Ludwig and associates were seeking only persuasion is that baldest subterfuge." Grant used the language and precedent of the *Beck* case, invoking the phrase "Covert and unspoken threats may be just as effective as spoken threats." Grant sentenced Ludwig to ten days in county jail, but because the relationship between the Metal Polishers' Union and the Ideal Co. was running so smoothly, the company was hesitant to enforce the sentence and asked the Wayne County Circuit Court to drop the charge.\(^{42}\)

How did these injunction cases effect the labor movement in Detroit? First, these cases directed the judges on the Wayne County Circuit Court in their legal thinking and in their rulings as illustrated by Judge Donovan's court hearings. When a judge did not rule in accordance with precedent, the Michigan Supreme Court could make a judge do so. The *Michigan Union Advocate* recorded an interesting interview with Judge Brooke in early 1905, which gave insight to the legal reasoning of a judge. Brooke stated: "I am holding an elective judicial position and would rather sacrifice that position than decide or interpret any point of law laid down in our statute books other than in a fair and impartial manner and in accord with the rulings of the Supreme Court."\(^{43}\)

Judges also issued more injunctions after 1898, as at least nine injunction cases made headline news in Detroit newspapers.\(^{44}\) The injunction against the Railway
Teamsters’ Protective Union in the boycott against Jacob Beck & Sons was only the second injunction ever issued in a Detroit court of law. In 1905, the Michigan Union Advocate was still discussing the Beck case, and stated that “this decision — so clearly favorable to the corporate interests — has governed the issuing of injunctions ever since."45 Employers often sought injunctions by submitting lengthy bills of complaint, coded in the correct legal discourse, to the Detroit judges. Because of the precedent set by the Michigan Supreme Court in the Beck case, the judges, in order to follow legal procedure, usually would automatically grant the preliminary injunction. For example, in the winter of 1904 V. E. Von Moch, a painting contractor, requested an injunction from Judge Hosmer against the Painters’ Union on very scanty evidence; but because the affidavit included the correct legal discourse, the injunction was issued. The Michigan Union Advocate reported: “It has been truly said that a temporary injunction could be obtained from the courts of this country on almost any grounds whatever, provided the attorney employed to draft the petition knew his business and complied with the statutory forms required in such prayers for relief."46 The grounds for this injunction were so slim that the case completely fell apart during the hearings for the permanent injunction and Judge Hosmer dismissed the case.

Another major impact was the decision of the Trades Council (and later the Detroit Federation of Labor) to take a more active role in politics. Because of the restrictive rulings of Detroit’s judges, it affirmed the idea that labor should conduct industrial warfare using the ballot box. Obviously, the greatest evidence of labor’s political activism was the re-election of Judge Donovan to the Circuit Court. The Detroit Times recorded that the union men “brought out many votes that would not otherwise
have been cast and Judge Donovan would have been beaten without their support and influence. In fact there is an object lesson in much value for organized labor." The annual Labor Day Review also recorded in 1906 a plea for labor to get active and vote. "Many have come to believe that our unions alone.... will not be able to gather to ourselves the full fruits of our labors, and in considering...the situation it has caused many to turn their eyes towards the political proposition as affording a solution to many of the industrial equations that now seem difficult, unless we do act as a unit and place in power men who are able to understand our needs and desires."48

The Detroit Trades Council also sponsored legislative initiatives. They created a labor league committee which was responsible for "formulating and placing upon the statute books of this State, laws that will protect the wageworkers, to investigate candidates for public office both in nation, state, and municipal government." The Council sponsored a bill to the Michigan State Legislature in spring 1904 which would "limit the meaning of the word 'conspiracy' and the use of 'restraining orders and injunctions' in certain cases." When the Detroit Trades Council reorganized in 1906 and became the Detroit Federation of Labor, it listed the "thorough revision of the Judiciary laws" as an item on its platform. In 1908, the Detroit Federation backed another anti-injunction bill entitled the Townsend Bill, but it quickly died on the Michigan State Legislative floor.49 Law-making initiatives, even though they gained only tenuous legislative support, became an avenue for labor to try to restrict the authority of the Michigan Supreme Court by creating laws to suppress the use of injunctions.

Because of the Court's rulings against boycotts, Detroit's labor turned the union label as a replacement. The union label was the official symbol of a trade union, and the
union members placed the label on their product certifying that the product was union
made. At President Huetter’s inaugural address for the Detroit Trades Council in 1906,
he stated that the “boycott is a weapon of last resort and should never be used unless we
are in a position to make it effective. I therefore admonish this body to a less frequent
but more effective use of this method of industrial warfare.” The *Michigan Union
Advocate* purported that “If there is anything that the union men of this city and their
friends should push it is the demand for the union label. Courts have tried in more ways
than one to destroy its efficiency, but as yet have not succeeded in destroying the demand
for its appearance on manufactured goods.”

But despite the widespread campaign for the label, it was not nearly as effective
as the boycott. The Detroit Trades Council was continually bickering over any union not
purchasing another union’s products. For example, in March of 1906 the Upholsters’
Union withdrew from the Trades Council because the Street Railway Employees’
delegate purchased a non-union, non-labeled couch as a wedding present. In March 1908
the Bakers’ Union started to fine any union member ten dollars for not buying union label
goods. Plainly put, not even union leaders, much less the rank and file only bought
union label goods. The *Michigan Union Advocate* termed this lack of support for the
label “gizzard” unionism. “Why? Because there are too many members of organized
labor in Detroit who are unionists at gizzard and not unionist at heart.” While the union
label was a tolerable substitute to the boycott, the campaign for its use was not as
effective and produced squabbles among the union leaders which further sapped union
strength.
The injunction cases were very costly, frequently draining the treasuries of the unions. In the Metal Polishers' injunction cases, the Detroit Trades Council offered the union any financial support they needed. These injunction cases were becoming such a hassle and so costly that the Trades Council debated whether to hire a permanent attorney to defend the unions in court. The *Detroit Times* recorded that "It seems that the frequency of this class of cases, since the Employers' Association, has necessitated a vast outlay of money on the part of nearly every union represented, and has forced them to adopt such means to protect the unions against indiscriminate injunctions." They proposed to offer the attorney a salary of $2,000 a year. "This would require 20,000 members at $.20 each or 10,000 at $.40 each, to meet this expense." Many of the delegates of the Council felt this was too much money to charge union members. 52

The court battles also were costly on time and energy. To fight a permanent injunction the union needed to supply witnesses and file affidavits. If the injunction was issued, it took creative energy to find away around it. If the union decided simply to ignore the injunction, they then had to fight off the police, who waved injunction papers in their faces and pushed them off the streets. All of this dampened morale. But the identity of these craftsmen was also wrapped-up in this issue. Fighting injunctions in court gave union men the appearance of being violent criminals, an image they abhorred. These men insisted that they were men of peaceful measures arguing that, "It is almost impossible to find a prominent labor man who does not denounce violence during strikes" 53

Surprisingly, the men did not even denounce the judges of the Wayne County Circuit Court, not even the ones who were commonly issuing injunctions, such as Judges
Brooke, Hosmer, or Mandell. In a lengthy editorial, the *Michigan Union Advocate* reported that, "Even the friends of organized labor fall into error of attributing to unionists an inclination to accuse the courts of the land of unfairness and prejudice in deciding cases where the laboring man is a party. It is seldom, if ever, the union man, in private conversations or while speaking at a meeting of his local, takes it upon himself to criticize, even mildly, a member of the judiciary." Whether the men actually denounced the courts or not, this announcement reflected how desperately the men wanted to maintain their public image as peaceful, law-abiding citizens.

Thus the injunction became a weapon of the Employers' Association which drained the morale of the union; but at the same time, it often became a rallying point for the union, stirring them to fight back. This was seen after the *Beck* case when the Detroit Trades Council was determined to find away around the ruling. It was also seen during the Metal Polishers strike at the Ideal Manufacturing Company, when despite the injunction and contempt hearings pending over a year and a half, they were determined to defy the court, stay on factory property, and win the strike. Judges who gave labor a fair chance in court, such as Judge Donovan, became heroes and asked to speak at union meetings. The Employer's Association was able to use the injunction on their behalf, often gaining the needed edge to win a dispute. But many times, the injunction backfired on them creating more problems than solutions. The injunction was not the panacea for employers' ills they hoped it would be.

By following these four Michigan Supreme Court cases, the influence of the Court can be seen upon the judicial decision of the Wayne County Circuit Court Judges, the increase use of injunctions, labor's involvement in politics, the discarding of the
boycott, and the reliance on the union label. These injunctions served as a costly weapon
Detroit's unions were forced to deal with. Sometimes they were able to maneuver around
the injunction, as in the Ideal strikes, and achieve victory over the company. More often
than not, the injunction restricted the workers in their ability to carry out the strike. They
also forced the unions to deal with long court proceedings which were costly and draining
on morale. While the Michigan Supreme Court's rulings were a significant threat to
Detroit's trade unions in the battle between labor and industry, it did not intercede on
workers' agency as they used their energy to find ways to fight injunctions and win
strikes.
Notes

1 Beck v. Railway Teamsters’ Protective Union, 118 Mich. 499 (1898), 516 and Mason, Organized Labor and the Law, 76.

2 This case resulted when Eugene Debs, the leader of the American Railway Union in the Pullman Car Company strike in 1894, appealed the decision made by the federal Circuit Court of Chicago to issue an injunction to restrict the activities of the strike. The case went before the United States Supreme Court and in 1895 they stamped their legal approval on the injunction and ruled to uphold the use of the injunction in a strike.


11 Ibid., 503,510.

13 It was customary in injunction cases for the judge to issue a preliminary or temporary injunction without hearing the side the defendants. After the preliminary injunction was issued then hearings began for a permanent injunction. This could last for several weeks, as the hearings allowed the defendants to refute the harsh accusations of the initial bill of complaint. After the hearings, if the union failed to justify their action, the judge would issue a permanent injunction. However, if the complaintants did not provide enough evidence against the union to warrant an injunction, the judge would remove the preliminary injunction. For more information on injunction proceedings see Frankfurter and Greene, The Labor Injunction, 53-81 and Witte, The Government in Labor Disputes, 83-110.


15 “Trades Council” Detroit Sentinel 13 and 27 November 1897.

16 “Only Violence” Detroit Free Press 30 November 1897 and “The Spirit is Everywhere” Detroit Sentinel 1 January 1898.


18 “Trades Council” Detroit Sentinel 28 May 1898 and “Year’s Progress: The Trades Council” Labor Day Souvenir 1898.

Even though the picket was now illegal, it remained the first activity a striking union began. There may be several explanations for this, one being the nature of the separated system of the United States Government. Because the picketing ban was court ruling instead of a legislative measure, police did not have the authority to keep men from picketing until they had authority by the court. A Company had to obtain an injunction from a court in order to legally stop the picketing. See United States Heater Company v. Iron Molders’ Union of North America 129 Mich. 354 (1902), 355-356 and Zunz, The Changing Face of Inequality, 214.


"Union Wreckers Fled with Their Dark Lanterns" Michigan Union Advocate 10 February 1905; "Union Wreckers Gain Attacking Metal Polishers" Michigan Union Advocate 10 February 1905; "Assaulted by Labor" Detroit Free Press 5 February, 1905; "Metal Workers Out on Strike" Detroit Times 8 February, 1905; "Judge Donovan Hands Down and Opinion" Detroit Times 10 February 1905; and "Injunction Was Refused" Detroit Free Press 11 February 1905.

Ideal Manufacturing Co. v. Wayne Circuit Judge, 139 Mich. 93 (1905), 93; "Mandamus for Donovan" Detroit Free Press 12 February 1905; and "Workmen are Now Restrained" Detroit Times 15 February 1905.

"Donovan would not issue order" Detroit Times 23 February 1905; "He Must Show Cause Again" Detroit Free Press 1 March 1905; and "Another Trip to Supreme Court" Michigan Union Advocate 2 March 1905.

"Jailbirds, Tramps, Bums: Used to Displace Polishers" Michigan Union Advocate 3 March 1905; and "Ideal Company Throws up the Sponge in the Injunction Proceedings Begun against Its Striking Employees" Detroit Times 2 March 1905.
"Withdraws His Case" Detroit Free Press 2 March 1905.


"Exciting Meeting of Trades Council” Michigan Union Advocate and Detroit Times, 4 April 1905.


“Ideal Company Goes to Court” Detroit Times 11 June 1906; “Strife is Still On” Detroit Free Press 12 June 1906; “Injunction Again Put Over” Michigan Union Advocate 12 June 1906; and “Jail Sentence for a Pair of Union Men” Detroit Times 23 June 1906.


“Judiciary Discusses” Michigan Union Advocate 10 February 1905.

Detroit’s Courts also issued nine other dramatic injunctions which made headline news in Detroit’s newspapers between 1898 and 1908. They include injunctions in 1901 against the Machinists’ Union and the Iron Molders’ Union; in 1904 against the Hack and
Coupe Drivers; in 1905 the Typographical Union; in 1906 the Boxmakers; in 1907 against the Shipbuilders, the Brass Polishers, and the Machinists' Union; and in 1908 against the Bartenders.


46 "Detroit Unionists Enjoined" *Michigan Union Advocate* 1 January 1904.


51 "Trades Council Notes" *Detroit Times* 23 March 1905; "Bakers Will Fine Members" *Michigan Union Advocate* 20 March 1908; and "Gizzard Unionism at a Premium in Detroit" *Michigan Union Advocate* 18 August 1905.

52 Witte, *Government in Labor Disputes*, 121; "Attorney for all the Unions" *Detroit Times* 23 May 1905; and *Detroit Times* 8 June, 1905.

CHAPTER TWO

A MILITANT STRIKE AND
A CONSCIENTIOUS JUDGE

*Baltic Mining Company v. Houghton Circuit Judge*

Fifteen years after the Michigan Supreme Court established their precedent in *Beck v. Railway Teamsters etc.*, their decision continued to have lasting impact on lower court decisions and on striking labor unions. This decision, after helping employers gain the open shop in Detroit, guaranteed the accessibility of the injunction to all employers in the state, since the precedent virtually demanded circuit court judges to issue injunctions against any form of picketing. In 1913, a case stemming from a group of militant strikers daily parading to promote their strike presented the Michigan Supreme Court with the opportunity to further define the restriction of the injunction. Deliberating over the legality of the parade, the Court ruled in December 1913 that these parades were indeed illegal, thus re-affirming their precedent on picketing and broadening the restrictive capabilities of the injunction.

This case also presented to the Michigan Supreme Court a judge trying to maintain law and order in a bitter dispute between powerful mining companies and frustrated miners. Judge Patrick O'Brien spent his childhood in the Copper Country where his father was a miner working for the powerful mining company Calumet & Hecla. After spending a few years away from the area, O'Brien returned to the region an intelligent lawyer ready to defend the local people as he took up several injury claims.
submitted against the mine companies. Earning a reputation as the "people's lawyer," O'Brien was elected to the county circuit court in 1911. During the strike, O'Brien desired to maintain order by upholding his position as a court of law, but at the same time providing sympathetic understanding to the miners' strike. While O'Brien was obligated to issue the injunction because of the Michigan Supreme Court's precedent, his own personal convictions conflicted with his legal obligations and made him reluctant to issue the order. O'Brien carefully planned his course of action, making decisions step-by-step in order to maintain the tenuous balancing act he was holding. When the Michigan Supreme Court demanded O'Brien to issue the injunction, he sustained his own human agency to make decisions within the limits of his own conscious. For these reasons, *Baltic Mining Company v. Houghton Circuit Judge* provides an excellent case for study. While the Michigan Supreme Court reaffirmed their precedent and broadened the legal capabilities of the injunction, it also reinforced the demands on circuit courts to follow precedent, creating unstable ground for those judges holding sympathetic opinions toward labor.

This case is also a fruitful source of analysis as it provides an interesting example of when the injunction was virtually ineffective in stopping picketing, parading, or any form of strike activity. Seeing why the injunction failed provides insight into the kind of impact the injunction had upon an industrial form of unionism. For nine months the striking mine workers, under the direction of the Western Federation of Miners (WFM) and its president Charles Moyer, paraded, picketed, caused great disruption to production, endured deep loss, and arduously toiled to achieve higher wages and recognition for their union. During this protracted struggle, the mine managers sought a sweeping injunction
to curb the activities of the striking miners. When Judge O’Brien failed to issue the 
injunction the mine managers wanted, the employers turned to the Michigan Supreme 
Court and the precedent established by Beck. Unlike the previous injunction cases 
involving the Michigan Supreme Court, this time the injunction failed to cease union 
activity. As the Court was thrown into the boiling cauldron of the strike, their authority 
failed to render the peace and order many were hoping it would.

The Keweenaw Peninsula, a long stretch of land reaching off the northernmost 
coast of Michigan’s Upper Peninsula and into the icy waters of Lake Superior, contained 
some of the richest deposits of copper in the world. Several mines began dotting the 
peninsula as early as 1845, sinking deep shafts into the buried copper. By 1885, this 
remote area produced nearly three fourths of the United States copper and a thriving 
community emerged around the mining and production of copper. For many years these 
companies maintained peaceful relations with their miners by establishing a system of 
welfare capitalism. Beneath the peaceful surface, those tensions between management 
and miners began brewing, and on July 23, 1913, those tensions exploded. On that 
morning, seven thousand mine workers quit work in the copper mines, and set out to 
convince their fellow workers to join them in their battle against the mine companies. All 
along the twenty-mile stretch of copper mines, the miners took to the street to fight for 
higher wages and better working conditions.¹

The very welfare system that had kept the Copper Country peaceful became a 
source of complaint to the miners and helped instigate the strike; for them, the 
atmosphere was stifling. Calumet &Hecla, located on the middle of the peninsula in 
northern Houghton County, mined the largest deposit of copper in the entire peninsula. It
created the strongest system of welfare capitalism in the region, and many of the smaller mines followed its example. As the Department of Labor reported in their 1913 survey of the strike, "The copper mining companies of the Michigan Copper District have uniformly pursued the policy of attempting to look after the welfare of their employees along certain well-defined lines." This welfare included company housing with rent averaging as low as $1.50 and as high as $7.00 a month. It also incorporated an employees' aid fund, a form of assistance in case of a mine injury or sickness; free fuel distribution to those in need; electric light at a reduced rate; a voluntary relief fund, which provided a monthly payment to widows and orphans; a pension fund for retirement; and the use of credit at the company owned stores. Calumet & Hecla provided even more to the community by building ten different schools for public use, granting ground for a Young Men’s Christian Association (YMCA), and providing land and money for a public hospital. With the ubiquitous quality of company control, mine workers had nowhere to turn but to the company.

A massive surge in population at the turn of the century in the copper region also served to heighten tensions. The population of both Houghton and Keweenaw Counties had grown enormously since the beginning of copper mining during the 1840s. Starting as an isolated backwoods mining camp, by 1910, it had turned into a thriving community of mine workers and small business owners. Immigrants from all over Europe and Canada streamed into the area, with some, such as the skilled Cornish miners, bringing their previous knowledge of mining with them, while others, such as the hard working Eastern Europeans, brought their bodily strength. Some groups, such as the radical Finns, brought with them their strong ideas of socialism and anti-capitalism and shared their
ideas to their fellow workers. Many immigrants brought their religious heritage, building churches and religious communities all across the peninsula. According to the 1910 census, Houghton County had a population of 88,098 and Keweenaw County had a count of 7,156. The census also reported in 1910 that the Keweenaw Peninsula held 39,464, or 38 per cent, men and women of foreign birth, and 41,430, or 40 percent, were children of foreign born parents. These immigrants and their children created a diverse ethnic community within the region.5

The Upper Peninsula’s copper mining industry and the region’s large community of miners became a site for mine union organization in the early 1910s. Indeed, the Western Federation of Miners (WFM) set its sights on the copper miners as early as 1903. Beginning in 1893 in Butte, Montana, another major copper mining center, the WFM was the only organization of mine workers within the metal mines. It spread local unions throughout the west, targeting those mines producing metals such as gold, silver, copper, and iron. The WFM, a militant union known for its socialistic principles and early form of industrial unionism, was quite successful in establishing strong locals in the western mines; but in order to consolidate its power within the metal mining trade, it needed the Michigan copper mines. It began organizing the Copper Country in 1903 meeting with only limited success. Organizers returned to the area in 1908 to re-establish the defunct locals and to create new ones in the area. By 1909, the locals had a membership of 253 and by the beginning of 1913 that membership had grown to 970, but the largest growth in membership occurred in the spring of 1913, as tension between the mine workers and the companies heightened to new levels.6
Two of the greatest concerns of the miners were the length of the working day and unsafe conditions in the mine. Working from ten to eleven hours a day, miners entered the mines at seven o’clock in the morning and did not exit until five o’clock that evening. These mines also had poor ventilation. With airshafts only a few feet deep, air was inadequately circulated within the mines and miners spent their workdays inhaling fetid air full of dust and fumes from explosives. While most mines were relatively cool, the Calumet & Hecla, with the deepest mine shaft of approximately 8,100 feet, frequently reported the temperature of their mines at 85 degrees. Even under these hot and stuffy conditions, few mine companies supplied their workers with water, forcing miners to bring their own water in small pails.  

Another major concern of the mine workers was low wages. Members of the locals were inspired when they discovered that their fellow copper miners in Butte had an eight-hour workday and a minimum wage of $3.50 for all underground workers. Calumet & Hecla, the richest mine in the region, paid their miners from $3.00 to $3.50 a day for a ten-hour day, while other companies paid their miners from $2.50 to $3.00 per day. Tramming was the most difficult work in the mines, and the most difficult position to fill. A trammer was responsible for loading a tramcar, and, with the help of another trammer, pushing that car (weighing 1,200 to 2,300 pounds) approximately 1,000 to 1,500 feet. It was strenuous, back-breaking work which only the young could do. Trammers at Calumet & Hecla earned on average $2.75 per day and those working at other mines earned an average of $2.40. From these small wages the companies made deductions for work supplies such as oil, dynamite, fuse, caps, carbide, and acetylene lamps.
Yet the most pressing concern of the miners in 1913 was the introduction of the one-man drill. Drilling, a heavy, cumbersome job was usually performed by two men. To save money, the mine owners switched to a drill operated by only one man. Many miners felt this was unfair and unfeasible. First, the drill was quite heavy for one man, weighing from 135 to 150 pounds, and second, many men were concerned that the one-man drill would place men too far apart to help each other in case of an accident. Their worries were not unwarranted, for in 1911 when the two-man drill was used, 63 men were killed and 679 were injured in the Copper Country.9

Thus, a combination of WFM organizing, company action, and a long simmering frustration with conditions led to the emergence of a vibrant unionism in the Keweenaw Peninsula. By July 1913 the Copper Country had seven thousand WFM members and the mine workers felt it was time for a strike. The WFM executive board, located in Denver, Colorado, encouraged the miners to wait until April 1914, as this would grant them enough time to consolidate their power, increase their membership, and guarantee them six months of good weather. The local members, however, were too impatient to wait nine months to begin their strike, and the executive board’s good advice went unheeded.10 On June 29, with a referendum approval vote of 98 percent, the district board of the locals in the region decided to request a conference with the mine managers, and if the companies refused, the miners would strike. The men then sent the mine companies a letter dated July 14 requesting a conference with them to discuss the possibility for a shorter working day, a raise in pay, and a change in working conditions. The letter wanted to maintain “the friendly relations that have existed between” the miners and their employers, but if the companies should follow “the example given by
some of the most stupid and unfair mine owners in the past, the men have instructed us by the … referendum vote to call a strike in all the mines owned and controlled by your company." The men requested a reply no later than July 21 and it was signed by C.E. Hietala, secretary of local no. 16 and Dan Sullivan president of local 16. The mine owners never replied, and the strike began on July 23, 1913.11

At the dawning of July 23, a large crowd of union men attacked those miners who did not honor the strike and were on their way to work. The WFM men wanted all work at the mines stopped, and they forcibly cleared men off the mining property. Sheriff James Cruse of Houghton County, completely overwhelmed by the masses of violent strikers, telegraphed Governor Woodbridge Ferris late that day requesting that the state’s entire National Guard be sent to the Keweenaw Peninsula to maintain law and order. Ferris immediately dispatched the troops, with some arriving as early as July 24. Three days later, under the direction of Brigadier General P.L. Abbey, all the troops had arrived: 2 batteries of artillery, 2 troops of Calvary, 1 company of engineers, 3 regiments of infantry, 2 ambulance companies, and 3 brass bands. A total of 211 officers and 2,334 enlisted men were stationed in the region.12

After the arrival of the troops, the initial violence in the region settled down. The mines were still closed-down, and the striking miners conducted peaceful morning parades in protest against the mine owners. In mid-August, with the situation seemingly calm Governor Ferris slowly began removing troops. The governor also initiated several attempts to mediate the strike, but the mine managers flatly refused each attempt. Even John Mofitt, a Representative of the United States Department of Labor, visited the Copper County and offered to mediate. The companies still rejected mediation, declaring
they would have absolutely nothing to do with the WFM or with those on strike. The mine owners were determined to solve the strike on their own terms.¹³

Along with the National Guard, men from the Waddell-Mahon Corporation were imported to help maintain order in the County. The Houghton County Board of Supervisors, controlled by the mine companies, requested James Waddell, president of the Waddell-Mahon Corporation in New York, to supply guards for the strike. The Board authorized Sheriff Cruse to employ approximately two hundred Waddell men, and as they reached the area by July 27, the sheriff distributed them across the region. These guards were rough, brutal men, often invoking strikers to violence, and by the end of August, the WFM and the strikers had had enough of them. On August 23, attorney Angus Kerr, encouraged by the striking miners, submitted a bill of complaint to Judge Patrick O'Brien of the Houghton County Circuit Court requesting an injunction against the Waddell men. Kerr argued that the Waddell men were acting as deputy sheriffs, which was in violation of state law, Section 2596 of the 1897 compiled laws of Michigan, stating that “no person shall be appointed deputy sheriff except the person...have been a bona fide resident of the county... for three months proceeding the time of the appointment.” Kerr claimed that the sheriff went beyond his authority by having men employed who were not “suitable aids” for the sheriff, but Judge O'Brien concluded that he had no authority or jurisdiction under Michigan law to issue an injunction. He decided that although the men could not be appointed as deputies, they could act as “aids” to the sheriff. Showing his sympathy for the union men and trying to mollify their irritation against the Waddell men, the Judge warned the sheriff to maintain the peace and not discriminate against strikers.¹⁴
In early September, as several mine companies began to re-open their mines, another wave of strike violence occurred. Despite the presence of a large number of troops, the county sheriff and his deputies, and the Waddell men, the strikers were parading daily and continuing their vigorous efforts to keep men from returning to the mines. Wives of striking mines and other women were on the front lines of the strike, sometimes causing more violence than the men did. They paraded around the mines and through town, looking for any man returning to work. If one was found, the women would call him “scab,” empty the contents of his lunch pail, throw rocks and eggs at him, or even dip brooms in human waste and wave it in his face. The women also confronted the guards imported to the area. The most celebrated example of a confrontation between women and the troops was the twenty-five year old daughter of a Croatian miner, Annie Clemenc, who became an important leader of the strike. Clemenc tightly clutched the American flag as she led a parade on the morning of September 13. When the parading strikers confronted the soldiers of the National Guard, Clemenc held the flag horizontally across her body, and dared one soldier to harm her. As Arthur Thurner related: “A bayonet hit her right wrist. She screamed: ‘Kill me! Run your bayonets and sabers through this flag! Kill me! But I won’t move back! If this flag won’t protect me, then I will die with it!’ Refusing to move, she hurled the flag to the ground and dared the troops to step on it.”

By the end of September, the daily parading and the strikers’ militancy were working so effectively that the smaller mines were unable to reopen. When the WFM applied for an injunction against the Waddell men, it sparked the idea for the mine managers’ to apply for an injunction against the WFM and its members. Seventeen mine
companies turned to Allen Rees and his law firm Rees, Robinson, & Petermann, the Calumet & Hecla’s regular law firm, to file a petition for an injunction. This firm and the mine companies had a secret agreement whereby all legal action during the strike would be funneled through Rees and his law partners.16

Attorney Rees submitted a bill of complaint to Judge O’Brien, complaining of the strikers’ interference with the mine companies’ business and causing “irreparable harm” to the companies. In an interview conducted with O’Brien in 1957, the 89 year old stated that “Rees came to my home in Houghton, and he had an injunction, one of the broadest ones prepared, that almost prevented a man from breathing if he was on a strike. He was handling it because he was the brainiest one of the corporation lawyers. The injunction was very broadly drafted to prevent the miners from meeting, marching, or collecting on the streets or anything of that kind. It was a very broad injunction.”17 Because of O’Brien’s reputation as an advocate of the people and because the injunction was so sweeping in its terms, the entire community was shocked when he issued the order on September 20, 1913. The injunction restricted the miners from picketing, parading, interfering with mining production, and from trespassing on company ground. The Daily Mining Gazette, the Houghton daily newspaper which was owned by the companies, termed the injunction a bit of “sardonic humor” on the part of the mining companies, stating that “government by injunction has been anathematized by labor agitators for years, but the Western Federation of Miners was the first of the parties of the conflict in the copper country to invoke this force.” The Calumet News, the city’s daily newspaper and organ of the companies echoed this view: “it seems like an effort to treat the Federation with some of its own medicine.”18
In contrast the *Miners' Bulletin*, the WFM's newspaper, called the injunction "One of the broadest and most sweeping injunctions ever directed against a labor organization." The paper believed the injunction was issued unfairly, without consideration of the striking miners, and reserved the most bitter language for Judge O'Brien. The paper expounded that the miners: "only expected justice and believed that the rights granted by the constitution and the laws as interpreted by numerous judicial decisions, would be enjoyed by them as long as Judge O’Brien was on the bench. In this they are disappointed." Indeed, the paper even asked whether the judge had forgotten his father, who was killed years before in a Calumet & Hecla mine.¹⁹

Shortly after O'Brien issued the injunction the WFM called a meeting to discuss the union's next move. They denounced the injunction as unconstitutional, a restraint upon their liberty, with one speaker comparing it to the terrible methods used by the czar of Russia. The strike leaders decided to have attorney Kerr immediately file a request for the dissolution of the injunction, and Judge O’Brien agreed to hear the oral arguments for the dissolution on September 29, 1913. Meanwhile, as the strikers waited for the hearing, the leaders encouraged the miners to follow the restrictions of the injunction, and, for that first week, they did. With the injunction in place, the mines began operating and those still employed traversed to work unmolested by strikers. The mine companies were hopeful that this injunction would break the strike, and with the relative calm in the region, they were beginning to think it had succeeded. The *Daily Mining Gazette* reported: "The move of the companies in applying for the injunction, as it is believed by many people, is sure to bring peace and quiet to the district and to the businessman, as well as the workingman."²⁰
On the morning of September 29 attorney Kerr approached Judge O'Brien with a petition for the dissolution of the preliminary injunction. He argued that O'Brien did not have the legal right to issue the injunction because the original bill of complaint failed to show any facts, it set up unlawful acts without specific examples and it did not support its allegations with affidavits. Kerr contended that in order to "secure a temporary injunction the complaintants must make a showing of right to final relief and such a showing would have to be by affidavit" He further asserted that if the charges made in the bill of complaint were proved untrue, the mine companies could be charged with perjury.

Rees pounced back, arguing that under Michigan law the assertions made in the bill of complaint, such as those stating: "stopped work of all kinds," "caused the call for troops to preserve order," and "drove the employes of your operators from their work," were facts not requiring proof. After two hours of legal arguments between Kerr and Rees, Judge O'Brien made his decision. He dissolved the injunction.

O'Brien then attempted to explain his stance on the strike. In an opinion which expressed his conflicting views, he stated that "This court will protect the rights of men who want to work, but it also will protect the strikers in the peaceable use of argument and persuasion to induce others to refrain from work. They have a right to combine, confederate and parade under proper conditions, the economic strength of the employing classes is in the control of plants and the right to employ or reject applicants for work. The strength of the strikers is in their number and their right to combine." O'Brien, while wanting to uphold the law, was unwilling to "aid in breaking this strike." He stated that the court of law "will give protection to all who want to work. It will not prevent the strikers from appealing to others to stop working and I am afraid that on closer study,
would have in the effect of this injunction." O'Brien believed that by dissolving the injunction he was allowing the strikers their natural right to parade. Even though he wanted to protect the employers' right to work, in this decision his desire to allow the strikers some liberty to conduct the strike trumped every other concern.

The mine companies and their managers were disappointed at Judge O'Brien's decision, as their dreams of returning to production were subsequently dashed upon the opinion of a single judge. As the strikers returned to their customary practice of daily parading, the disruption to the momentary calm was rendering, as strikers gave "vent to their satisfaction over the dissolution." The national magazine, *Colliers*, recorded: "The strikers greeted the dissolution of the injunction with a... celebration, parading... engaging in mass picketing, rising the cry of 'scab' and shouting 'to hell with the injunction,' and generally proceeding in a way to put their friendly Judge 'in bad' with both himself and his neighbors." By October 2, Sheriff Cruse had once again lost control of the situation and cited the dissolution for the cause of the recent disruption. Even Ferris blamed the disruption on the decision to dissolve the injunction and expressed disappointment that the prospect of reducing the number of troops in the district seemed indefinitely delayed.

Judge O'Brien's decision gave relief to the WFM and the strikers, but one writer of the *Miners' Bulletin* was still disturbed that the Judge issued the injunction in the first place. "In a certain sense this leaves us in the same position as before its was granted. All the wrong was done to us, yet there is no question but some will expect us to be in a duly grateful mood because it was dissolved. There is no gratitude on the part of the writer." Even though O'Brien still failed in the eyes of this writer, he was "glad that
Judge O'Brien has sufficient manhood to admit that the injunction was issued on insufficient grounds." This bitter striker concluded that it still would have been "better a hundred times that a mandamus should be issued from the Supreme Court ... than that he should haste to grant an illegal request."\(^{23}\)

With the return of the daily parading, the mine companies' attempts at re-starting the mines were again thwarted. Frustrated, the mine managers had attorney Rees try once again to obtain from Judge O'Brien some form of restraining order on the strikers. On October 4, he approached the Judge, this time with a bill of complaint accompanied with eighty-five affidavits that mentioned violence, name-calling, and threats. Despite some startling testimonies and the copious number of them, O'Brien still denied the restraining order, citing that the miners had the right to peaceably parade. Rees then went directly to Lansing and filed a bill of complaint against the judge to the Michigan Supreme Court.

On October 7, 1913, in a petition to the Michigan Supreme Court, Rees argued that several employees of the mine companies refused to join the strike and were attempting to return to work in the mines. The WFM through "violence, arms, threats, intimidations, riotous conduct, beatings, and other unlawful means carried on by large gatherings" drove these industrious employees from their work. This caused the mines to shut down, the pumps discarding the water in the mines to quit, and the mines to fill with water which caused "great and irreparable damage to the ... mines." Since Judge O'Brien dissolved the injunction and then refused to order a restraining order, it was "an abuse of discretion on the part of said court and of the Judge" and the mine owners were still entitled to an injunction. In support of his petition, Rees included the eighty-five affidavits he had submitted with his request for a restraining order to Judge O'Brien.
Rees requested that the Michigan Supreme Court order the dissolution of the injunction to be withdrawn and to command Judge Patrick O’Brien to appear before the Supreme Court to show cause.\textsuperscript{24}

The Court, due to the state’s growing population and increasing caseload, was then composed of seven justices, and it still maintained a conservative stance on the law and toward labor injunctions. Rees’ argument convinced them and on the next day, they issued a writ of mandamus to Judge O’Brien to show cause on November 4. They then suspended the decision to dissolve the injunction and re-issued the original preliminary injunction, but with one exception: it permitted parades. Since the Michigan Supreme Court had not decided on the use of a parade during a strike and were uncertain it could be included under the injunction, they allowed strikers to parade peacefully. Several newspapers reported that the mine companies received the news of the Supreme Court’s decision with joy, and the papers believed the injunction would end the strike. The \textit{Calumet News} noted that “The news from Lansing was received with pleasure by law-abiding citizens throughout the strike zone.” The \textit{Daily Mining Gazette} reaffirmed the decision of the Court, and declared that “It is generally believed that the Supreme Court did a very wise thing to order the enforcement of the injunction granted last month by Judge O’Brien.... and it is also thought that this means practically the end of violence during the remainder of the strike.” The mine managers, their newspapers, and their attorneys seriously believed the injunction would end the violence, but these high hopes for the power of the injunction to restore the mine owners’ vision of peace and order were soon mistaken.\textsuperscript{25}
Despite the new ruling, picketing continued all across the region. The newspapers were disgusted at the striker’s flagrant violation of the law. The Daily Mining Gazette reported: “Just as if there were no courts, no injunction declaring picketing and violence and molestation of persons illegal...just as if there were no authorities and no law, the strikers... continued their picketing again yesterday and assaulted men going to work, deputies, and soldiers with epithets and verbal abuse.”\(^{26}\) Even Governor Ferris expressed his exasperation with the ineffectiveness of the injunction. Along with General Abbey, Ferris authorized Samuel Pepper, the Judge Advocate General for the Michigan National Guard, to compose a pamphlet denoting the legal authority of the National Guard in regards to the striking men under the injunction. In a letter to General Abbey, Pepper noted “in accordance to your suggestion, I have prepared an additional paragraph which related to the duties of the Militia when operating in a district where an injunction has been insured against the strikers.”\(^{27}\) Ferris then demanded the county sheriffs to enforce the injunction, stating that the “State troops are in the district only to act in assisting the civil authorities in suppressing the violence and disorder.” He sent General Roy C. Vandercook back to the area to conduct investigations and to encourage the civil authorities to enforce the injunction.\(^{28}\)

As the strikers continued to picket, both Sheriff Cruse and Sheriff Hepting of Keweenaw County (the county directly north of Houghton County) were actively distributing the injunction papers to all members of the WFM and to those still on strike. This became a difficult task because of sheer number of strikers and it was neigh impossible to locate every union member on strike. To make matters worse for the mine owners, the sheriffs were hesitant to make any arrests for contempt of court until every
striker had been “served” with the injunction. As the sheriffs dallied on the injunction, the exasperated mine managers tried desperately to get the mines running again. As of October 8, 5,445 men were working in the mines, 2,079 of them underground. About 1,500 more men were needed before the mines would have a normal workforce. Since a thousand to two thousand men left the area at the beginning of the strike, finding men to replace those on strike became quite a chore. Many of the mines, especially the Calumet & Hecla, began importing men from outside the district. This aggravated the strike violence, with more violence reported in the month of October than in the previous months of the strike.

Wanting their injunction to work in ceasing the strikers’ activity in order for them to return to copper production, the companies authorized Rees to approach O’Brien with a writ of enforcement, which required both Sheriff Cruse of Houghton County and Sheriff Hepting of Keweenaw County to enforce the injunction. Surprisingly, Judge O’Brien agreed to issue the writ. On the morning of October 24, in obedience to the order, the Sheriff Cruse arrested 141 men at a streetcar station, where the strikers were trying to block the imported strikebreakers from going to work. That afternoon, the sheriff brought those arrested to the county courthouse, and with their sheer number, the mine workers completely filled the large courtroom. WFM attorney Angus Kerr once again approached Judge O’Brien and using technical legal arguing stated that because the men had not committed contempt before the judge, they should not be arrested. According to Kerr, the men “should have been served with citations to appear before the court and show cause why they should not be punished.” Rees replied that “a court of equity has the authority to enforce its own decrees.” Kerr then argued that this writ of
enforcement was unlike any other legal document, and that Judge O’Brien thereby was creating his own precedent. Rees countered by “reasserting his contention of the right of the court to employ any lawful means to enforce its decrees.”

While the arguments occupied the length of the afternoon, at the end of the day O’Brien concluded “the court has the power to enforce its decrees by the method I adopted in this case. This is a Supreme Court injunction and this court must enforce it, laying aside whatever the private opinion of this court may be. There is no doubt that the injunction will be enforced.” As O’Brien flatly stated, the Michigan Supreme Court’s precedent created by *Beck* obligated him to enforce the injunction, even though his own private feelings made him hesitant to do so. After the judge voiced his position he turned to those under arrest and encouraged them to obey the injunction. “This court does not want to interfere with your liberty,” O’Brien stated “but order and liberty should go hand in hand. The working class should respect this injunction. Do not interfere with men going to work. They have that right and the court will protect them in it. Respect the writ, I ask you to bear this in mind and tell the other strikers. Law and order comes before even the solution of this industrial problem.” O’Brien hoped that by instructing the strikers on their legal obligations they would obey the order.

After O’Brien announced his opinion, Rees stated that he believed the arrested men were being misled by their leaders and suggested that if the men could indicate “they will in future refrain from such acts, these proceedings will not be pressed against them. I believe a proper appreciation of the injunction will bring about what we seek.” Kerr angrily replied that the men were not violating the injunction and “objected to their being scolded by Mr. Rees.” He claimed they were not being misled and that “Mr. Rees’ offer
amounted to 'pledges and a plea of guilty.'” The *Daily Mining Gazette* opined that “Mr. Kerr showed so much heat in this statement that Judge O’Brien interrupted him and announced he would set a date for the hearing,” and the judge set the date for October 30 and released the strikers. But on the day of the hearing, there was little courtroom drama compared to the previous hearing, as the attorneys debated whether to conduct the case through oral testimony or written affidavits, and the arrested miners were not present at the hearing. The attorneys then arranged for the case to be decided upon the basis of filed affidavits rather than court testimony, and Judge O’Brien would decide his opinion on the affidavits, calling for oral testimony only when needed. The rest of the time at the hearing was spent discussing Judge O’Brien’s show cause hearing before the Michigan Supreme Court on November 4, 1913. 

Judge O’Brien decided against going to Lansing himself, since his presence was not imperative and he was swamped with cases from the strike. He sent Attorney Kerr to defend his decision before the Court, since it was Kerr’s petition he agreed with in his decision to dissolve the injunction. Before the hearing began, the Judge submitted a Return of Respondent on November 1 and argued that the injunction was improvidently issued, which was why he decided to dissolve it. O’Brien denied to the court that his decisions were unjust, erroneous, or an abuse of discretion, and he was satisfied that he had no authority to issue the injunction. After filing this return, Attorneys Kerr and Rees requested to conduct oral arguments before the court, and those arguments began on November 14. 

In argument before the Michigan Supreme Court, attorney Kirschner, in partnership with Rees, asserted that because of the Supreme Court’s decision to allow
peaceful parading in the region, it opened the door for the continuance of the violent disruptions in the area. Kirchner and Rees also asserted that the renewed violence in the area was brought about because of Judge O’Brien’s unfortunate decision to dissolve the injunction. To which Justice Bird, a more politically progressive judge, replied “Is it not true that it might be said that the strike itself is unfortunate.” Kirchner refuted, “Yes, but the backbone of the strike was broken when this court modified the former injunction and the strikers take a different meaning from it in its present form. They take an entirely different meaning than I think this court means.” The attorneys for the company held such faith and hope for the injunction that they believed the injunction had broken the strike. In Kirchner’s rash statement before the most prestigious court in the state, he blamed the Court for the continued violence and disruption, an accusation which did not sit well with the justices of the Michigan Supreme Court.

As the attorneys debated before the Michigan Supreme Court over the injunction, those in the strike region eagerly awaited the decision of the Court. The Daily Mining Gazette, attempting to explain the legal intricacies of the injunction from the companies’ advantage point, noting that “the law and practice on injunctions is so complicated that it is difficult to present all of the facts in this case in ordinary newspaper language.” In so doing, the Gazette made a commendable effort at describing the oral arguments before the Court. It also noted that four hundred strikers had been arrested for contempt since the court’s order, but so far, none of them had been charged. The paper pondered whether the Supreme Court’s decision “will have an effect on Judge O’Brien’s attitude toward these persons alleged to have been held in his court in contempt” Indeed, violence in the strike region had by no means subsided after O’Brien’s admonishment to
the 141 strikers arrested for contempt. On November 11, the deputies arrested 18 women and girls; on November 21, the deputies arrested 70 more men and women; and on the third of December, 66 more strikers were arrested for contempt of court.\(^3\)

On December 6, 1913, Judge Patrick O'Brien, after a month of reading the affidavits and debating his final decision, held the final hearing for the first 141 strikers arrested for contempt court. O'Brien found and charged all the men guilty of contempt. Yet he suspended their sentences and released them free of charge, stating: "I am still of opinion, however, that the men who are on strike in this controversy, if they thoroughly understand the law, will endeavor to cheerfully obey it, I do not believe that there is any desire upon their part to commit acts that involve them in contempt of this Court. They say in their answer that they have endeavored to live up to the terms of the injunction." O’Brien believed that the mine workers could and did understand the law, and they wanted to uphold the law and since "They are permitted to peaceably assembly and to peaceably parade and to propagate their cause by peaceable persuasion. The best interest of the laboring class, as well as the capitalist, rest in a cheerful acquiescence of the order and decrees of our Courts. Because I believe that these men have been carried away by their enthusiasm for a cause rather than any intention to deliver any disrespect and disobey the order of the Court."\(^3\)

O'Brien's opinion reflected his carefully plotted steps around the legal obligations of the injunction in order to allow the strikers more freedom to conduct their strike.

In order to guarantee that the mine workers understand their obligations Judge O'Brien summoned the men back to the court a few days later so that he "might explain to these men their responsibilities as convicted men under suspended sentence, their duty
to the court, and the purpose of the court to punish them severely for any violation of their parole.” O’Brien instructed them “that they must not abuse men going to work, must not interfere in any way with men going to work,” and then he asked them to take a pledge to obey the injunction. The entire audience rose and took an oath that they would. O’Brien then gave a warning to those citizens in the community who had criticized his decisions: “Now, there being a good many prominent citizens here today, I want to say another word. This court was severally criticized as well as the officers of the law, for trying to uphold the law, I want to say that any speaker in the future who at a public meeting criticizes this court is going to be hauled up for contempt of court ... for what has taken place, and any newspaper editor who interferes with the courts of justice in this country, whether its the Miners’ Bulletin or the Gazette or any other paper will feel the strong arm of the law. This court is going to be respected.”39 The mine owners and prominent citizens were horrified at Judge O’Brien’s audacity, not only to let the lawbreakers go free, but to make an outspoken statement against those critical of his opinion. It shows O’Brien’s painstaking effort to create a fair and just courtroom and he wanted no criticism of his methodically planned decisions.

Many in the community and the mine managers felt justified when the Michigan Supreme Court made its final decision shortly after O’Brien’s controversial contempt rulings. In a unanimous, per curiam decision in Baltic Mining Company v. Houghton Circuit Judge, the Court concluded that O’Brien exercised no discretion as to the law and his “contention, that the bill of complaint is not properly verified, is untenable.”40 The court then stated that the dissolution of the injunction was not legally founded, stating “We are impelled to hold that the respondent misconstrued the law and his official duty.”
They then clarified that the "Courts do not grant injunctions to restrain strikes lawfully conducted. They are only concerned with them when lawlessness and acts of violence and intimidation develop from them." The justices decided that because the parading was "so timed and conducted as to meet and obstruct such employees going to and from their work during morning and evening changes of shift...And all such conduct must be regarded as strictly within that provision of the injunction prohibiting defendants from 'impeding, obstructing, molesting, or disturbing the employees.'" Thus, the justices put the parade under the restrictions of the injunction, and permanently reinstated the injunction to restrict all parades, picketing, and any interference with employees. They issued a writ of mandamus to Judge O'Brien ordering him to reinstate his original injunction.  

After nearly four months of protracted court battles, the mining companies received the permanent injunction against the miner workers. A jaded editorialist thought this ruling would put Judge O'Brien in his place, taunting him to charge the Supreme Court with contempt for disagreeing with his opinions. The Supreme Court's final decision renewed the hope for the miner owners that the injunction would be respected and obeyed.  

Judge O'Brien finally issued sentences to those committing contempt of court, in accordance with the Supreme Court's ruling. But even with the injunction permanently in effect, it still had little impact on the strike.  

After the granting of the permanent injunction, the strike was already beginning to die out. With the larger copper mines already returning to production, some of the smaller mine companies were also able to re-open their mines. The strike received a significant blow on December 24, when sixty-two children and eleven adults perished in
a tragic accident. On Christmas Eve several female strike leaders sponsored a Christmas Party for the children and their families at the Italian Hall, a public meeting place in Calumet. When someone mysteriously called “fire” on the upper-level of the hall, the children stampeded to the stairwell, stumbling over steps and each other, until the welter of bodies was tragically caught in a jumble in the stairwell, and seventy-two perished in the tragedy. This catastrophe devastated the entire community, and many miners and their families, already suffering from cold weather, poverty, and now the loss of these children, lost all enthusiasm for the strike. The strike staggered on through the early spring and investigations made by the United States Department of Labor and a Congressional Committee of five congressmen failed to help the striking miners regain their footing in the strike. On April 12, 1914, at the time the WFM recommended the copper miners begin their strike, the strike came to an official close.

There have been several possible explanations for the loss of the strike: the strike was called too soon, the mine workers failed to rally the entire community in support of their cause, and that the mining companies had too strong a hold on the community with their sturdy system of welfare capitalism. The reason for the loss is not the point of this chapter, but what this chapter does show is that the Michigan Supreme Court’s authority in the form of a permanent injunction against the strikers failed to render a resolution to the strike and it failed to effectively cease the striking miners’ activities. The strikers, with their massive numbers and militarism continued to picket and parade on a daily basis, in disobedience of the injunction.44

Why did the injunction fail? First, the strikers mustered enough strength through their numbers and loyalty for their cause that they were unafraid of the county sheriffs,
the Michigan National Guard, and the Waddell Men. When the sheriff did serve the injunction, it never rendered a sense of respect from these strikers, as their passion for the strike triumphed over any other emotion or obstacle in their path. Second, as Judge O’Brien was reluctant to issue the injunction because of his personal convictions on labor and on the strike, the authority behind the injunction lost much of its power and did not render the respect it usually garnered from those on strike. Last, the geographic distance of the court and the remoteness of the Copper Country served to decrease the prestige the Michigan Supreme Court usually held in the lower part of the state. Most likely, to the miners on strike, the Michigan Supreme Court was a distant force not wielding much authority in a remote community such as the Keweenaw Peninsula. Thus, as the Michigan Supreme Court rendered their decision on the permanent injunction and concluded that the strikers’ parade was an illegal activity, their rulings had little effect on the remote area of the Copper Country. It further shows that the Michigan Supreme Court could not rob the striking miners of their own agency, as they disobeyed the injunction and continued picketing, parading, and persuading workers to join their cause for higher wages and safer mining conditions. While the injunction was a devastating force to trade unions in Detroit, it failed to invoke much fear from the miners, and, as the miners were unified across all boundaries of job descriptions, the injunction was no match to their collective force.
Notes


4 The Keweenaw Peninsula is split into four major counties. Ontonagon County is located on the southern end of the peninsula, and Baraga County is located in the southwest corner of the peninsula. The main two counties containing most of the copper mines is Houghton County, located on the center of the peninsula, and the Keweenaw County, which stretches to the northern tip of the peninsula.


13 Ibid., 78-83.

14 Ibid., 53-59.


16 Lankton, *Cradle to the Grave*, 231.


18 “Injunction Issued Prohibiting Molestation of Mine Workmen” *Calumet News* 22 September 1913 and “Injunction Issued Against Agitators” *Daily Mining Gazette* 21 September 1913.


20 “Federation Men Urged to Ignore Injunction” *Daily Mining Gazette* 23 September 1913; “Two Workmen Attacked and Beaten Today” *Calumet News* 22 September 1913 and “Great Copper Strike Hangs on Injunction” *Detroit Free Press* 29 September 1913.

21 “Judge O’Brien Dissolves the Strike Injunction” *Daily Mining Gazette* 30 September 1913.

22 Peter Clark Macfarlane, “The Issues at Calumet” *Colliers* 52 (February 7), 1914; 24, “Copper Mine Strikers Win Parade Right” *Detroit Free Press* 30 September 1913, and “Wild Scenes are Enacted Early Today” *Calumet News* S30 September 1913.

76
23 “The Injunction is Dissolved” *Miners’ Bulletin* 30 September 1913.

24 *Baltic Mining Company v. Houghton Circuit Judge*, Supreme Court Case Files, Box 49, case no.25905, State Archives of Michigan.

25 “Calvary Charges Copper Strikers Who Stop Sheriff” *Detroit Free Press* 10 October 1913; “Continued of Injunction is Effective” *Calumet News* 9 October 1913; “Injunction against Strike Picketing Continued in Force by Supreme Court” *Calumet News* 8 October 1913; “Local People Wrought Up Concerning Killing” *Daily Mining Gazette* 9 October 1913.


27 Samuel Pepper to General P.L. Abbey, 27 September 1937, Box 2 Samuel Dewitt Pepper Papers, Bentley Historical Library, University of Michigan.

28 “Governor Wants Injunction Enforced” *Daily Mining Gazette* 16 October 1913 and “Insists that Injunction be Enforced” *Calumet News* 16 October 1913.

29 “Serve Injunction on Each Federation Member” *Daily Mining Gazette* 16 October 1913 and “Serve Notice on All Strikers?” *Calumet News* 14 October 1913.


31 “209 Arrests for Alleged Violation of Injunction; Hearing this Afternoon” *Calumet News* 24 October 1913.


33 *Baltic Mining Company v. Houghton Circuit Judge*, Supreme Court Case Files, Box 49, case no.25905, State Archives of Michigan.

In fact, the Michigan Supreme Court made note of this comment in their final opinion in *Baltic Mining Company v. Houghton Circuit Judge* stating “We find difficulty in reconciling this statement (that the strike was broken) with the conditions existing at the time referred to, as represented to us by the verified emergency application.... and it was represented that the strike had gathered such strength, developed in magnitude, and sprung into lawless activity that the property of complainants and the lives of their employees were in imminent jeopardy, demanding immediate action” (644).

“Supreme Court Hearing on Strike Injunction” *Daily Mining Gazette* 18 November 1913


“Judge O’Brien Finds 139 Allouez Strikers Guilty of Contempt of Court, but Suspends Sentence” *Calumet News* 6 December 1913.

“Thousands Meet Today to Protest against Campaign of Lawlessness; Grand Jury Will Probe Disorders” *Daily Mining Gazette* 10 December 1913.

*Per curiam* is a legal term for having all the justices write the decision together.


“C.H. Mahoney is Cited to Appear before the Grand Jury” *Calumet News* 15 December 1913.

“Judge O’Brien Sentences Striker for Contempt” *Daily Mining Gazette* 20 December 1913.
CHAPTER THREE

SILENT SENTINELS AND PEACEFUL PICKETS

Clarage v. Luphringer

In the fall of 1913, while the Michigan Supreme Court was deciding on the legality of the parade in the copper miners’ strike, the Court was also deliberating over the final definition of picketing in the case In re Langell. This case, submitted in November 1912, pushed the boundaries of the Court’s definition on picketing, making the Court re-assess its fifteen-year old precedent set by Beck. In this definitive case, Harry Langell, a prominent leader of the Iron Molders’ Union in Lansing, tried a new form of picketing, one he considered still legal under the Michigan Supreme Court’s rulings. After a local judge served an injunction on the local, Langell returned to the plant, stood directly opposite the main entrance, and remained there silently observing the men going to work at the factory. He spoke to no one and made no physical contact with any of the strikers; he did not even carry a sign proclaiming he was on strike. To the local court, this was still picketing, and Langell was charged with contempt of court. He appealed this decision to the Michigan Supreme Court, and in January 1914, shortly after the ruling in Baltic Mining Company v. Houghton Circuit Judge, the Court ruled in a split decision that Harry Langell’s picketing was in violation of the Court’s precedent. The Court had thus broadened the definition of picketing to include even silent picketing.

Two years after this ruling, a group of trade unionist in the city of Kalamazoo attempted to test the new boundaries of the Michigan Supreme Court’s ruling in In re
Langell, and believed that since the ruling was a five to three decision, they could convince the court that picketing could be a peaceful activity. Their attempts failed, for as the Court reaffirmed and solidified the Beck precedent in the Langell case, there was little chance for the union to change the Court's opinion, and Clarage v. Luphringer only served to solidify the new definition of picketing made in Langell. This chapter analyzes the arguments the unions used to influence the Court in their decision, and shows that in the 1910s, the Michigan Supreme Court was pushed to be more definitive on their stance on peaceful picketing.

This case also provides an opportunity to investigate two different strikes in the city of Kalamazoo where the injunction had a lasting and devastating effect upon the outcome of the strike.\(^1\) The first strike, under investigation occurred in the summer of 1916, when a group of machinists conducting a strike, set up pickets around the plant and passively told those seeking work that there was a strike at the company. After only a week of picketing, the employer sought an injunction against the men and after the injunction was served, the pickets disbanded and left the property. Even though there was a second attempt at picketing, using Harry Langell's form of silent picketing, the strike had ended and the machinists quickly found re-employment throughout the city. The second strike, a group of Iron Molders in the same factory, learned from the machinists' strike, and were more aggressive in their picketing and persuasion of strikebreakers. This strike lasted approximately three months, from August to October 1917, and had several men convicted of contempt of court for violating the injunction. Even though the molders were more aggressive than the machinists and disobeyed the injunction, the molders were also seriously handicapped by the injunction. The injunction
not only helped to defeat both these strikes, it also crippled many other trade union strikes in the city during the 1910s. Why was the injunction so powerful in Kalamazoo? These two strikes provide an excellent source of study, providing the unique circumstances in which an injunction was effective in permanently damaging a strike.

In 1916, with European nations locked in a bloody conflict and Democratic incumbent Woodrow Wilson seeking a second presidential term, the small city of Kalamazoo, Michigan was experiencing a substantial economic growth. Snuggled in the Kalamazoo River valley of southwest Michigan, Kalamazoo had about 40,000 residents in 1910, a 62 percent increase in population from the 1900 census. The city was a center for the booming paper industry, and by the end of World War I, Kalamazoo and its outlying small towns had became the largest paper producing area in the United States. Nearly one-half of the city’s workforce found employment in the paper industry and Kalamazoo earned the nickname the “Paper City.” In addition, the city also developed several small industries notably: the Kalamazoo Corset Company; the Shakespeare Company, which made fishing tackle; the Gibson Guitar Company; and the Kalamazoo Stove Company, famous for its direct order catalogs and its slogan “From Kalamazoo Direct to You.”

Another smaller Kalamazoo industry was the Clarage Fan Company, a metalworking foundry producing metal fans and blowers. Beginning in 1872 when Thomas Clarage and his business partner C.H. Bird opened a foundry known as Bird & Clarage. When Bird retired in 1885 and Clarage’s three sons joined him in the business, the firm changed to Clarage & Sons. Charles Clarage took over the business when his father died in 1895 and re-located the plant to the corner of North and Frank Streets, on
the north side of Kalamazoo. In 1912 he began manufacturing fans and blowers for commercial heating and cooling, changing the name of the plant to Clarage Fan Company in 1915. Clarage maintained two hundred workers at the foundry and business began booming during the years of the war.⁴

Charles Clarage was also an active and powerful community leader. Born in 1860, he was educated in Kalamazoo's schools and colleges. After his graduation, he worked at the Bird Windmill Company in Lincoln, Nebraska for several years before returning to Kalamazoo to work in his father's business. Besides running the business following his father's death, Clarage served two terms on the city council and one term as mayor. Active in the Masonic lodge, he held degrees in both the Scottish Rite and the York Rite. Friendly and outgoing, Clarage, maintained pleasant relations with his workers, but ran his foundry with a tight fist.⁵

At Clarage Fan Company, a hundred men worked as molders and another hundred worked as machinists. The molders had a strong local union affiliated with the International Molders' Union, and the local enlisted with the Kalamazoo Trades and Labor Council. The machinists held a nascent local with the International Association of Machinists (IAM), just opening a charter in April 1916. The Kalamazoo Trades and Labor Council held a hall on South Burdick Street for meetings and gatherings, and while the Council was quite small, it was supportive of locals' efforts to secure union contracts and better working conditions. When the newly formed machinist local debated beginning a strike for higher wages, the Council opened its hall for meetings and gave advice to the new leaders of the local.⁶
Charles Clarage, leery of the new machinists’ union, raised the wages of the machinists ten percent in mid-April 1916, hoping to prevent the union from requesting more. The machinists, however, were not satisfied with this increase. On June 28, a committee of machinists approached Clarage with their request: a three cent increase per hour for all men making less than thirty cents and a two cent increase for those making over thirty cents. The committee informed Clarage they would wait until July 8 for an answer, but Clarage replied that he would give them his answer right then: no increase. The men proceeded to approach him once again on July 8, this time they requested not only higher wages, but also the reinstatement of two men recently fired. Once again, Clarage denied their request. On July 10, the machinists approached Clarage one more time, requesting higher wages and the re-instatement of the fired men threatening to strike if their request was denied. Clarage lashed out that he would not have anything to do with their union and had come down that morning purposively to fire two men on the committee, as he wanted to dismiss “every union man in the shop.” After Clarage’s outburst, Fred Schultz, a member on the committee, rang the bell, the appointed signal for the men to strike, and ninety-five of the hundred machinists walked out of Clarage’s shop. 

The men soon set up pickets around the plant. Henry Bergdoff, a leader of the strike, instructed them to be peaceful and friendly and not to resort to any type of violence. Fred Schultz, captain of the pickets, established two men at each approach to the factory. Most pickets stopped any man approaching the factory, informed him there was a strike going on, and attempted to persuade him not to apply for work. One ambitious picket, Charles McCormick, claimed in court testimony at a latter date that he
stopped nearly six men a day while he was on picket duty. Other strikers stated they stopped far fewer men, and some pickets chose to stand on the property in silent protest. Frank George, for example, stated in his testimony: "So far as I am concerned I stood silent there and let everybody pass without saying anything about a strike. I suppose I walked around some, but as far as speaking or saying anything, the only picketing I did was to stand there." These men also made a circular stating the facts about the strike and distributed it to people passing by, and posted it on telegraph poles and in storefront windows. No riotous, loud, or violent conduct occurred at all during the seven days they were on picket duty, as S.M. Holder witnessed, "nothing unpleasant occurred at all."8

Even Clarage did not feel threatened by the pickets surrounding his plant. He greeted them daily on his entrance to the plant, and as Homer Barnes recorded, Clarage would "say good morning." He never made any objection to our being on picket duty. He never complained to me about we men being there that I know of. I did not hear any complaint of any kind on his part." Indeed, Clarage even approached the pickets one day, told them a story about a man with smallpox, and passed out cigars to those on picket duty. Homer Barnes stated regretfully: "I did not smoke any of his cigars at the time, I was not lucky enough to get any of them." The men did not have any complaint against the conduct of Charles Clarage, they just wanted higher wages.9

At the end of the strike's first week, John Luphringer, a representative from the International Association of Machinists, approached Clarage with a compromise. The union could bargain with the other strike issues as long as Clarage signed a closed shop agreement with the International Association of Machinists. Clarage, however, remained
adamant in his refusal to deal with the union. Luphringer informed Clarage the strike would continue until he granted the union’s demands.

This confrontation may have given Clarage the impetus to request an injunction against the striking machinists, and he submitted a Bill of Complaint to Judge Weimar of the Kalamazoo County Circuit Court. Clarage put John Luphringer’s name at the top of the list of those he wanted restricted. Clarage argued in the complaint that he had no desire to sign a closed shop contract with the machinists because some of his employees had “conscientious scruples” against unions. The pickets were also keeping men away from his plant, due to their threatening nature, and he was losing employees because of them. Clarage ended by stating his most important reason for receiving an injunction: the picketing was threatening the life of his business. Judge Weimar issued the injunction on July 18, 1916.10

The injunction orders came as a complete surprise to the men on picket duty. Wanting to be peaceful and law-abiding, the men on duty immediately obeyed the injunction and left the plant. Indeed, they dispersed so quickly that when Fred Schultz, returned from a brief break off picket duty, all the men had disappeared. He had no idea what had happened to the pickets until he learned of the injunction. After the dispersal of the pickets, the strike leaders called a meeting to discuss the injunction and gain advice from Luphringer and Fox, both IAM representatives. These discussions failed to obtain immediate results, as a majority of those on strike returned to work either at Clarage’s or at another foundry in the city. Even Fred Schultz found work just three days after the injunction. Only a handful of the first ninety-five machinists remained unemployed, the injunction had broken the strike.11
Although the strike was over, a few crusaders continued to fight for higher wages and to protest against the injunction. They made a large banner which stated “Strike Still on at Clarage’s” and paraded it up and down Burdick Street. They also sponsored protest parades, public meetings, and sought for a way to resume picketing. The strike leaders believed that there was a way to conduct picketing peacefully, without any violation of the injunction. They consulted their lawyers, the law firm of Muholland & Hartmann, concerning the ramifications of the injunction and the possibility of resuming picketing. The lawyers advised them that there was a way to conduct peaceful picketing and sent their advice in a letter to William Fox, a representative of the IAM. Fox read this letter aloud at a meeting of the local on August 11, and the men decided to resume picketing, despite the injunction. Three men, Henry Bergdoff, Charles McCormick, and Charles Schultz, returned to Clarage’s plant to stand as “silent sentinels” of the strike.12

Henry Bergdoff, leader of this new attempt at picketing, stated that “We didn’t make a practice of speaking to anybody as regards their going to the factory. We stood there and kept still and said nothing. We spoke to them, just to pass the time of day with them, but we did not mention that we were union men. When we passed the time of day, we would not tell them why we were there. I would say, ‘Hello boys, how is everything?’” But even this “peaceful picketing” as “silent sentinels” was in violation of the injunction, and after a day and a half of this silent observance, Charles Clarage informed the men that if they did not leave he would press charges of contempt of court against them. The men stayed, however, until Fox encouraged them to quit. He felt, “that in the absence of the international attorney… it would perhaps be best to stop picketing until further notice.” The men permanently stopped picketing after this
warning, Clarage never pressed contempt charges, and the strike ended without the men
obtaining their increase in wages or a closed shop. For all but one men, the strike was
over, and that man, Henry Bergdoff was determined to prove that picketing could be done
peacefully.\textsuperscript{13}

Shortly before the strike began, Charles Clarage had laid off Bergdoff, an officer
in the union, from his position as a machinist. Even though technically fired from the
shop, Bergdoff still participated in the strike, informing pickets how to behave, and
picketing after the injunction was served. Even when the strike was over, he was still
active in fighting the injunction, not finding re-employment; he lived off strike benefits as
he tried to circumvent the injunction through legal means. On September 9, he filed a
motion to Judge Weimar to have the injunction dissolved. This motion, however, was
never pressed or argued. The injunction continued in effect until February 1917, when
the court conducted a hearing on the injunction, taking oral testimonies from the strikers
in open court. The Court waited to make a final decision until June 21, 1917, and then
the Judge decreed to uphold the injunction. The matter remained in a languid state until
December 1917, when Bergdoff and the local’s leaders decided to appeal the decision to
the Michigan Supreme Court. The Court put the appeal on the calendar in April of 1918,
and then the two parties submitted briefs in argument of their cause.\textsuperscript{14}

The lawyers for the local argued in their brief that the men conducted themselves
peacefully while on strike, having explicit directions to refrain from threats and violence
and to act in a quiet, peaceable manner. The lawyers asserted that “There was nothing
done by any of the pickets at any time that could have intimidated the meekest person.”
They noted that even Clarage visited the picket line, passed out cigars, and stated that the
pickets conducted themselves in a gentlemanly manner. Therefore, as the lawyers argued, the Judge only considered picketing illegal because he considered it intimidating by nature. They argued, however, that in this case it was shown that picketing could be done without intimidation, because “picketing, per se, is not more harmful to an employer than a parade through the streets of a city where the plant is located or than a mass meeting.” Hence, it was ridiculous to them to say that just because employees were approached near a plant it was illegal; this same behavior could be done at any location. They even argued that *Beck v. Railway Teamsters* defined picketing as accompanied with violence, intimidation, and annoyance, but in this case, there was none of these activities. Therefore, since there was no sign of any violence used and only peaceful picketing occurred, “the injunction issued by the trial court should be set aside in its entirety.”

These lawyers hoped that by showing how picketing could be done without threats or intimidation the Court would reverse its precedent. In this poorly written brief, the lawyers may have misread the original precedent, for they failed to note that to conduct picketing was to *be* intimidating and threatening. Pickets, by the Court’s very definition, were violent, intimidating, and coercive. If the precedent was going to be changed, the definition of picketing needed to be changed. Illustrating that a violent activity was done peacefully would not be enough to change the Court’s mind. In his reply to the Court, Harry Howard, Clarage’s lawyer, exploited these holes in the defense’s argument.

Howard argued that this was basically a “moot” endeavor, because the strike had been over for a year and a half. All the men on strike were employed elsewhere, except for Bergdoff, and he was prolonging the suit because he was still living off the strike
benefits. Howard maintained that the opinion of the circuit Judge was well founded, and there was little need for an appeal. The injunction restrained picketing, not just threats or intimidation. But, Howard argued, that with picketing at every approach to the factory, it showed beyond a doubt that the picketing was causing intimidation. Even the second picketing, the silent sentinel, still caused intimidation by their mere presence. Howard concluded by referring to Grant's opinion in the *Beck* case, showed how the union misquoted the opinion, and argued that they had a lack of understanding for Michigan's precedence on picketing. The Michigan Supreme Court agreed with Howard, and stated that the "question thus raised and discussed is not an open one in this State." On July 18, 1918, two years after the strike was over, the court ruled in favor of Clarage and gave the costs to the local.16

Why did Bergdoff and the local think this appeal would work? What gave them the motivation to appeal when the stance of the Michigan Supreme Court continued to rely so heavily on the precedent established by *Beck*? And why, after the strike was over for a year and a half did they decide to appeal a dead issue? Two events may have influenced them in their decisions: first, a molders' strike occurring at the Clarage Fan Company during the summer of 1917, and second, *In re Langell*, a previous injunction case before the Michigan Supreme Court.

By summer 1917, Clarage was making enormous profits. After the nation had joined the Allies in the war, Clarage received a contract with the United States Government to produce blowers for war ships. In addition, he also increased his business with his contacts in Chicago, whose concerns were likewise flourishing during the economic boom of the war. The iron molders working for Clarage felt they needed to
have a share in the wartime profits, and asked Clarage for a fifty-cent raise. The molders noted that "during such time he has had the labor and skill of the best and most efficient molders in the century... And as a result of their loyalty and devotion and hard work (Clarage) has become rich while (they) have grown old in service." The molders believed they should receive $4.50 a day, an amount they deemed a living wage, rather than the $4.00 a day they currently were making.¹⁷

When Clarage denied their request, sixty molders walked out on July 30, 1917 to join the other 140 molders on strike from five different foundries in the city. The members of local 396 of the International Molders Union waged a strike far different from that of the machinists: as the pickets were more vocal, more aggressive, and more active in persuading the strikebreakers. One night they persuaded nine imported strikebreakers to quit, giving them dinner at the Trades and Labor hall and paying for their return to Chicago. These molders were so effective in keeping men from employment at Clarage's plant, that Clarage requested an injunction against them on August 6. That injunction restricted them from interfering with employees, inducing men from leaving, congregating around the plants, picketing on the property, and from going to the homes of the employees.¹⁸

Unlike the machinists, the molders disobeyed the injunction and continued their picketing on Clarage's property. Just two days after the injunction, the strikers marched, single-file, around Clarage's plant in silent protest to the injunction. Clarage decided to import guards to protect his property. These guards were rough, brutal, men and were unafraid to use force. On the evening of August 25, when a striking molder approached one of the guards to ask him a question about the strike the guard shot the molder in the
leg. This incident sparked a public meeting in Bronson Park, and the molders union discussed the possibility of sending the guards back to Chicago and decided to ask the Kalamazoo City Council to deport the men. A week later, the city council declared they did not have the legal means to do so. At a second meeting on September 15, city alderman Charles Shaffer, discussed the injunction and stated he wanted the injunction law repealed, and suggested that “After some men have served time in jail for violating the injunction, we will see unionists taking the necessary action to have it repealed.”

This speech may have sparked an increased interest in the Trades and Labor Council into having the injunction repealed. An interest further heightened when, as Shaffer stated, the Court charged eleven men with contempt of court.

Citing of the obvious disobedience of the injunction, Clarage pressed charges against the striking molders, giving instances when strikers were on his property and submitting affidavits supporting his allegations. Judge Weimar then sentenced six striking molders to jail. Judge Weimar reasoned that the men knew about the injunction, and chose to violate it anyway. Edwin Kosten, the business agent for the union and leader of the strike, received the longest sentence, because he not only gave advice to the strikers to disobey the injunction but also because he was familiar with injunction law and was obligated to have a higher responsibility to obey the injunction. Judge Weimar observed that Kosten was familiar with “the decisions of the Supreme Court in matters relating to labor controversies; that he knew the decision in the *Beck* case and in the *Langell* case; that he did not accept the principle laid down in the latter case because it was a ‘three to four’ opinion.”
Though placed in jail for thirty days, Edwin Kosten continued to give advice from his cell. As the men were “Placed together in the north corridor down stairs where they spent the afternoon swapping yarns, playing cards, and receiving their friends,” Kosten was deliberating whether to appeal his sentence. He, along with the local, decided to file an answer to the original bill of complaint as an attempt to dissolve the injunction and release the men in jail. In their answer, they put in all the tricks in the book to convince the judge he had issued an unfair injunction. They argued that they wanted a higher wage because they were only seeking enough wages to maintain a fair standard of living. They only asked for a “living wage,” and believed Clarage had no consideration for his employees and “counts only on the lowest price he can force men to sell their labor power.” They also asserted that Clarage had joined an association of manufacturers, and this association was corrupting him, causing him to vex and annoy the union men and deprive them of their constitutional rights. Clarage had also imported brutal guards in order to break-up the union and incite them to violence. Thus, because of all these factors, Clarage had come to court with “unclean hands” and he was not justified to receive an injunction. These arguments failed to convince the judge, and the case ended with the filing of this document. The outcome of this strike is unknown, but it is most likely that the molders failed to receive their increase in wages and the strike fizzled out in the fall.

How did the molders’ strike motivate the machinists’ to appeal their injunction case to the Michigan Supreme Court? The court case In re Langell may hold a clue. The Supreme Court decided this case in January 1914, and while most of the Court’s injunctions cases were a unanimous decision, this case was a split decision. It began in
Lansing, Michigan, when an injunction restrained a local of the Molders Union from picketing. One man, a Harry Langell, returned to the spot where the men had been picketing and stood there, silently observing the men returning to work. He did not say a single word to anyone. The owner of the plant, however, felt this was still threatening behavior and asked the County Judge to conduct contempt proceedings. The Judge found Langell guilty of contempt, so Langell appealed the decision to the Michigan Supreme Court denying he had violated the injunction.

This unusual case divided the Court in its decision. Chief Justice Aaron McAlvay wrote the opinion for the case and stated that “the principal dispute in the case is as to whether there was any evidence tending to show that petitioner willfully and knowingly disobeyed and violated the terms of the restraining order.” Justice McAlvay decided that because Langell was a leader in the strike, he understood that the injunction restricted picketing, and his claim of innocence was ill founded. “It is clear, from his testimony, that he went there because he thought that he could do it with more discretion than the ordinary members... under the impression that a silent picketing was not unlawful.” McAlvay concluded that even though there were high court opinions upholding this concept, in Michigan, however, all picketing was illegal. He ruled “this court has repeatedly held that it will not consider mere irregularities, technicalities, or matters of practice upon certiorari. The other matters presented by petitioner, being within these decisions, require no considerations.” The opinion of the circuit Judge was upheld, and justices Brooke, Stone, Moore and Steere agreed with his opinion.

Justice Franz Kuhn, however, was not as convinced of the guilt of Langell as Justice McAlvay, stating that “I find nothing in the record to warrant the finding that he
annoyed the workmen; in fact, the workmen who were sworn, testified that he did not talk to them nor interfere with them in any way." He thought that the order of contempt of court should be set aside, and Langell cleared of all charges. Both Russell Ostrander and John Bird agreed with this dissent, and the Justices of the Michigan Supreme Court disagreed on how picketing was defined. 25

So how did this case and the molders' strike motivate Henry Bergdoff to appeal? Obviously, the machinists used many of the same tactics Harry Langell did in their return to picketing after the injunction. This, perhaps, was the legal source Hartmann consulted when he advised the local that picketing could be done without violation of the injunction. Edwin Kosten, the business agent for the molders' union, was, as Judge Weimar observed, quite familiar with this Supreme Court case. Particularly after serving thirty days in county jail, he was quite motivated to take on the authority of the injunction. Thus, with the harmful effects of the injunction on both of these strikes and the near victory of In re Langell, the Kalamazoo Trades and Labor Council, under the motivation of Henry Bergdoff and Edwin Kosten, decided to appeal Judge Weimar's decision in Clarage v. Luphringer. While In re Langell, with its split decision, left an ambiguity around the legality of picketing, the unionists in Kalamazoo felt they could exploit this ambiguity by showing how peacefully picketing could be conducted. This exploitation, if successful, would serve to overthrow the restrictive precedent created by Beck, and create the legal grounds for peaceful picketing. It would drastically reduce the authority of the injunction. 26

This attempt failed, however, for in the summer of 1918 the Court delivered an unanimous decision in Clarage v. Luphringer and ruled that picketing was still illegal, no
matter how peacefully it was conducted. Even Justice Kuhn, who wrote the dissent for In re Langell, was not persuaded by their argument. The entire precedent of Beck v. Railway Teamsters' Union. hinged upon the restrictive definition of picketing—that picketing was inherently violent and coercive. In order to succeed in changing the precedent, the definition of picketing needed to be changed to a less restrictive meaning. It would take twenty more years for the concept of peaceful picketing to gain firm legal ground, and for the Michigan Supreme Court to change its precedent. As the nation began to change after the New Deal in the 1930s, the United States Supreme Court began to rule more favorably toward labor unions. Circuit Judges also provided much more lenient rulings toward striking unions, and the legal concept of peaceful picketing gained recognition in many courtrooms. As the definition of picketing changed, the Michigan Supreme Court would adapt to the times.
Notes

1 These two cases are based on court testimony, court documents, and a handful of newspaper articles. These were the only records which have survived describing the two strikes at the Clarage Fan Company.

2 In 1912, there was a dramatic strike at the Corset Company, involving several women from the company and representatives of the International Ladies Garment Workers' Union. An injunction severely crippled this strike as well, see Barbara Speas Havira, "Dwindling into Failure: The International Ladies' Garment Workers' Union Strike in Kalamazoo, 1912," in Michigan Academician 20 (1988): 397-415. At least four other strikes were occurring during the time of the machinists' strike in 1916, see the Kalamazoo Gazette Telegraph 18 July 1916 through 31 July 1916.

3 Larry Massie and Peter Schmitt Kalamazoo: The Place Behind the Products (Sun Valley, CA: American Historical Press, 1998), 142-149 and Wills Dunbar, Kalamazoo and How It Grew (Kalamazoo: School of Graduate Studies Western Michigan University, 1959), 175-176.

4 "Clarage Company Fourth Largest Air Conditioner" Kalamazoo Gazette 24 June 1934 the Western Michigan University Archives and Regional History Collections, Coller, Ross Collection, A-1911, Kalamazoo, Michigan.


6 Labor - Union, Papermakers, Western Michigan University Archives and Regional History Collections, Coller, Ross Collection, A - 1911.
7 “Clarage Men Out on Strike” *Kalamazoo Gazette Telegraph* 10 July 1916 and
Defendants Answer in *Clarage v. Luphringer*, case file no. 16417, WMU Archives and
Regional History Collections.

8 Oral Testimony by Fred Schultz, Charles McCormick, S. M. Holder, and Frank George,
*Clarage v. Luphringer*.

9 Oral Testimony by Homer Barnes, *Clarage v. Luphringer*.

10 Bill of Complaint, *Clarage v. Luphringer*.

11 “Injunction Bans Clarage Strikers” *Kalamazoo Gazette* 18 July 1916 and Oral
Testimony by Fred Schultz, *Clarage v. Luphringer*.


14 Brief on Behalf of Appellee, *Clarage v. Luphringer*, Case no. 28301 *Journal of the
Michigan Supreme Court* 2510, State of Michigan Law Library.

15 Brief on Behalf of the Appellants, *Clarage v. Luphringer*.

16 Brief on Behalf of the Appellee, *Clarage v. Luphringer*, and *Clarage v. Luphringer*,
202 Mich., 612, 1918.

17 Answer of the Defendants, *Clarage v. Kalamazoo Local no. 396*, Case file no. 1777,
WMU Archives and Regional History Collection.

18 “200 Kalamazoo Molder Strike” *Kalamazoo Gazette* 31 July 1917, “Strike Breakers
are Turned Back” *Kalamazoo Gazette* 2 August 1917, and “Stop Picketing by
Injunctions” *Kalamazoo Gazette* 6 August 1917.

Molder Shot by Guards” *Kalamazoo Gazette* 26 August 1917, “Unions to Hold Protest
Judge Weimar sentenced three men ten days in jail, one man 15 days, and the last two 30 days.

Order Adjudging Defendants Guilty of Contempt, *Clarage v. Kalamazoo Local no. 396*.

A “living wage” was a nebulous concept whereby a person’s wage would be placed at a certain rate high enough to maintain a decent standard of living. It was a popular idea during the Progressive Era. See Lawrence Glickman, *A Living Wage: American Workers and the Making of a Consumer Society* (Ithaca, NY: Cornell University Press, 1997).

The doctrine of unclean hands was a legal argument unions would use against an employer seeking an injunction. The idea was to bring into court the misconduct of the employer and argue that he had unclean hands and did not deserve an injunction. This concept only rarely worked, and was quite vogue in the 1930s, especially in Detroit when the auto industry was unionized and there was an increase number of injunctions. This account was one of the earlier uses of “unclean hands” in a labor injunction case.

Answer of Defendants, *Clarage v. Kalamazoo Local no. 396*.


This conclusion cannot be verified, because any records of the Kalamazoo Trades and Labor Council, or the machinists’ local, or the molders’ local have been lost. The only sources available were the court records and a handful of newspaper articles, this conclusion is merely an educated conjecture.
For forty-two years the Michigan Supreme Court held the precedent set by Beck v. Railway Teamsters' Protective Union, continuing to rule that picketing was an illegal activity. Over those years the Court broadened the ability of the injunction to include a strikers' parade and re-affirmed their definition of picketing as an inherently violent activity by including silent picketing. In 1922, however, the Court made a short opinion in Schwartz v. Cigarmakers' International Union, continuing to uphold and reaffirm their precedent on picketing, and then the Court was silent on the injunction for twenty years, not discussing the subject in a written opinion until 1940. The injunction, despite the Court's silence, continued to play an important part in the unfolding drama between labor and capital during the 1920s and the 1930s, especially in Detroit as it continued as an anti-union, open shop city. As Detroit became the auto capital of the world during the 1920s, the auto industry maintained a vehement open shop policy with its workers and the industry remained un-organized during the entire decade. Some unions, particularly the Industrial Workers of the World and the United Automobile, Aircraft and Vehicle Workers of America, attempted without success to unionize the industry and the injunction had an important job in hampering several strikes waged by these unions.
During the 1930s, as the industrial unionism of the United Automobile Workers (UAW) galvanized the working people of Detroit to rise to the cause of unionism and defend their right to organize, the tyrannical auto companies of Ford, Chrysler, and GM succumbed to the changing political environment of the New Deal era and signed union contracts guaranteeing workers the right of collective bargaining. The injunction continued to play a part in these strikes, but as industrial unionism mobilized the masses of auto workers the injunction declined in its usefulness as a major tool for employers. In the midst of these momentous union victories against the auto companies and the injunction lay the small story of a handful of garage workers seeking a contract with their anti-union employer and fighting a court dispute over the definition of peaceful picketing. This court battle, *Book Tower Garage v. Local no. 415*, managed to overturn the Michigan Supreme Court’s precedent and the Court ruled that picketing was no longer inherently violent and peaceful picketing became a legal activity. This chapter analyzes the various influences on the Michigan Supreme Court’s decision in the changing political and economic environment of the New Deal Era.

Detroit in the 1920s was a different city than its earlier days at the turn of the century. As the auto industry boomed during the 1910s, hundreds of workers flooded to Detroit to work in its massive factories. As historian Olivier Zunz noted, “By 1920, Detroit had become a mature industrial metropolis, altogether different from the burgeoning industrial city of the turn of the city.” In 1900 the city of Detroit had a population near three hundred thousand, and by 1920 the population was near a million, almost triple the size it was twenty years earlier. Out of the million in population, the auto plants employed nearly 135,000 workers in 1920. Auto production also increased
dramatically over these twenty years. In 1915, there were less than one million cars and trucks produced in a year, but by 1929 there was near four and a half million cars being produced. The Ford Motor Company alone employed 128,000 workers by 1929.\(^1\) This economic prosperity and growth in Detroit soon met with the poverty and despair of the Great Depression.\(^2\)

Unemployed in Detroit reached outrageous heights during the 1930s, with approximately 300,000 men and women out of work, an estimated 46 percent in 1933. The Ford Motor Company in particular sent thousands of unemployed workers out on the streets. At the advent of the Depression when Ford shut down its factories in August 1931 in order to re-tool assembly lines for a new automobile, employment fell from 130,000 to 37,000. Those out of work waited in masses outside auto plants desperately hoping for a chance to work, even if for a single day. When full production began again in the late 1930s and the Depression entered its last years, workers took up the cause of unionism to defend their rights to good wages, better working condition, and collective bargaining. With the rise of the United Auto Workers (UAW), the auto companies' tyrannical reign ended as GM and Dodge both signed their first union contract in 1937 and Ford signed his in 1941.\(^3\)

As the Michigan Supreme Court approached their decision on picketing in 1940, three major influences served to effect the court's decision. The first influence was a change in the federal government's negative policies toward labor, most notable was the enactment of the National Labor Relations Act (the Wagner Act.) Passed by Congress in 1935, the law guaranteed labor the right to collectively bargain through a representative union. The act also established the National Labor Relations Board, consisting of five
well educated men to mediate labor disputes and sponsor elections for the representative union. The Wagner Act received its final seal of approval in 1937, when the United States Supreme declared the bill constitutional, and through later decisions, the United States Supreme Court gave the NLRB binding legal authority in deciding disputes.

The state of Michigan passed its own Industrial Relations Bill in 1939. While not as flexible as the Federal Act, the law, commonly referred to as the Labor Mediation Bill, established a mediation board to hear and promote the swift, peaceful resolution of labor disputes. The act ruled that employers could not interfere with the formation of a labor union amongst their employees and they could not discharge any employee for joining a union. The Act also ruled that before a union could begin a strike, it must submit a notice to the mediation board in order for the board to provide mediation before the strike began. Although the law granted unions in Michigan the rights of collective bargaining and representation, many labor unions were dissatisfied with the bill. They were unhappy with the act’s stance on picketing, as it ruled out any mass picketing that blocked public roads or denied access to an employers’ property. It also only allowed residents of the state of Michigan to conduct picketing, and limited picketing even further by only allowing those who were employed at the plant on strike to picket. The UAW’s newspaper, the *United Automobile Worker* deemed the bill a “masterpiece in anti-labor legislation, as it required a majority vote of all employees before striking…. and gave recognition to company unions and strikebreakers.”

While the federal government gave unions more rights than did the Michigan government, a second change affected the Michigan Supreme Court: local courts began ruling in favor of peaceful picketing. The legal concept of peaceful picketing gained
popularity among the more liberal judges in county courts, as they released picketing from sweeping injunctions by defining a set number of pickets a union could conduct. Thus, local judges would allow around five or six pickets before an entrance of a business, and even though this limitation was only a mere fraction of the swarms of pickets customarily used at a strike, it at least allowed a number of pickets instead of none.

Judge Robert Toms was one of the first Judges on the Wayne County Circuit Court to rule in favor of peaceful picketing. In a memo on Judge Toms, labor's non-partisan league of Detroit stated that "he was the first judge in the Circuit Court to openly attack the decisions of the State Supreme Court on picketing. Judge Toms openly stated that he would not follow the Supreme Court decisions, and gave his reasons." Judge Toms' decisions were radical compared to the normal jurisprudence of picketing and in an opinion made in February 1935, he questioned the flimsy definitions of picketing, stating: "as to the term 'picketing' it is a colloquialism, the exact definition of which is perhaps open to some debate, but I see little difference between standing on the sidewalk and telling the passerby that a certain fact exists and handing him a pamphlet which says that certain fact exists, or carrying a sign upon one's back which says that the same fact exists. If all of these are picketing, what becomes the right of free speech and the right of assemblage which are constitutionally guaranteed?"

In a later decision, made in March 1939, Judge Toms went further, criticizing the Michigan Supreme Court on their decision in In re Langell, stating: "The statement in the Langell case that 'there is no such thing as peaceful picketing' is factually unsound, and this court reserves its undoubted right to regard it as dictum." This opinion was quite outspoken for the time period, as the non-partisan league reported: "It will be noted that
the above decision involves exceedingly strong language, particularly when one bears in mind that the judge is discussing a matter upon which the Michigan Supreme Court had ruled the very opposite."

Other judges joined Toms in his opinions and refrained from issuing sweeping injunctions against picketing. Judge Clyde Webster claimed in 1940 to have been an advocate of peaceful picketing for some time, but because his cases were never appealed, his rulings were never put on record. He was also an advocate for stopping *ex parte* injunctions and for having a court hearing before issuing any injunction. Judge Webster stated: "I think that I have always been in favor of peaceful picketing when there was a dispute between the employee and the employer. I have not had difficulty in applying the doctrine when it involved any question of union rules or regulations or hours of employment, wages, working conditions, and so forth." Not every judge thought the same way as Judge Clyde Webster, in fact the majority on the Wayne County Circuit Court still thought picketing was illegal, and continued to issue sweeping, restrictive injunctions against unions. For example, Judge Arthur Webster, as the non-partisan league reported and as the UAW termed, was a "Ford" judge and had no qualms ruling in favor of Ford, issuing restrictive injunctions, and sentencing those who disobeyed to jail.

These sweeping injunctions, however, were becoming more difficult to enforce as the UAW began organizing the masses of autoworkers. The injunction, when confronted with hundreds of men picketing for their right to a union, failed to effectively force angry strikers to cease their activity. Thus, the third influence on the Court was the rise of industrial unionism across the state, especially in Detroit, and the growing ineffectiveness of the injunction. Labor activity in Detroit during the 1920s, confined mostly to the trade
unions and those affiliated with the AFL, left the large auto plants unscathed by unionizing activity. Robert Dunn, in his sociological study on the auto industry in the 1920s, did note some minor union activity during the early twenties. Dunn highlighted one of the more significant strikes which actually led to a union victory. In a strike at the Fisher Body Co. beginning in February of 1921, a group of workers walked out when the company instituted a major reduction in pay. These strikers created a solid picket line around the plant and refused to budge, even when an injunction was issued against them. The strike lasted until April when the company agreed to grant some of the workers' demands. Even though this strike ended in victory, Dunn noted some strikes did not end with such success. For example, in April 1919, at the Wadsworth Manufacturing Co., a parts plant for Ford, failed to achieve their goals, even though 1,500 workers walked out and ninety percent of them belonged to the United Automobile, Aircraft and Vehicle Workers of America, a small trade union for auto workers. This small union failed to win many strikes, and it ceased to have much effect on the industry at all after the early twenties. Dunn pleaded “in this formidable industry where workers are treated like mere cogs in a machine ... where every spontaneous protest is met with the crushing banishment of those individuals who dare to question the arbitrary decision of foreman or executives, the one outstanding and primary need is for the workers to organize.” Indeed, the auto workers did organize, and it began shortly after Dunn published his eloquent plea.

As the auto workers in Detroit suffered massive unemployment in the first few years of the thirties, and, as the companies drove their assembly lines at higher speeds while simultaneously driving down wages, the workers decided to unionize. Forming the
UAW in the mid thirties, the auto workers began organizing the auto industry, and after tackling the smaller plants first, the UAW set their sights on GM, the largest auto maker in the world. In late December, 1936, several hundred workers barricaded themselves inside two strategic GM plants located in Flint, Michigan, the center of GM’s empire. Known as the Flint Sit-Down strike, this momentous strike, lasting forty-four days, won the UAW their first union contract with GM. Winning a contract, however, was not the only victory in this strike as workers also won an important battle against the injunction.

Maurice Sugar, head of the legal team working on the sit-down strike, took charge in circumventing the injunctions during the strike. One of the first labor lawyers in Michigan, Sugar began fighting legal battles for unions in Detroit during the 1910s. Earning a law degree from the University of Michigan in 1912, he fought for Detroit’s working people and waged legal battles against the authority of the injunction. Writing an anti-injunction pamphlet in 1916, Sugar criticized the Michigan Supreme Court’s ruling, arguing that the courts had taken away the workman’s rights of free speech. Sugar assessed that “if the power of the judges to issue injunctions is to continue, then the workingman might as well return to the servitude of his ancestors with his eyes open.” Sugar spent twenty years fighting court injunctions and one of his biggest legal victories was staving off the injunction during the Flint sit-down strike.

On January 2, 1937, Judge Edward Black issued a sweeping injunction against the strikers occupying the GM plants, ordering them to evacuate the plants and to cease all picketing. Sugar, along with the strike leaders, wanted to circumvent Judge Black’s injunction. They quickly discovered that Judge Black had no jurisdiction to issue the order as he had approximately two hundred thousand dollars invested in GM stock. The
strike leaders rejoiced as this discovery dissolved the injunction. GM soon shot back by seeking an injunction through a different judge, this time ensuring that the judge was safe from any personal interest in the company. They sought the injunction through Judge Paul Gadola, who issued one of the longest decisions in an injunction case. He ordered the evacuation of the plant by 3:00 P.M. on February 3, 1937, with the enormous fine of $15 million dollars to be levied against the union if they disobeyed. The strikers remained, however, until February 11, when GM granted the strikers the right of a union contract. The strikers walked out of the plant in a song of victory instead of humiliated defeat. Even though the strikers remained in the plant past Judge Gadola’s ultimatum, GM never charged them the outrageous fee of fifteen million dollars, and the union won a clear victory. 

12

After the victory of the UAW in Flint, many workers in Detroit were inspired to conduct their own “sit-down,” and during spring 1937, thousands of workers began sit-down strikes. As historian Christopher Johnson has documented, the number of sit-down strikes in Detroit alone was over one hundred, putting over thirty-five thousand workers in direct involvement in the strikes. Employers’ frequently sought the help of the injunction to force striking workers out of their businesses, but police enforcement of the injunction became a much more ardent task, as the workers barricaded themselves inside the buildings and eviction only caused violence and disorder. A good example of these sit-down strikes was at the Dodge Main plant in Hamtramck, a working class city within the municipal boundaries of Detroit. Ten thousand workers occupied the plant on March 10, and Chrysler immediately sought an injunction from Judge Allan Campbell, known for his conservative labor rulings. He granted the injunction, ordering the men out of the
plant, but when the Detroit Police Department confronted ten thousand angry strikers barricaded in a massive plant, they abandoned their task.

While the police at the Dodge main plant were unable to evict the strikers from the plant, they decided to try enforcing some of the other injunctions issued against smaller groups of strikers. One of these consisted of Polish women striking for higher wages and better working conditions at Bernard Schwartz's cigar plant. On March 20, 1937, Detroit police invaded the plant. As the one hundred and fifty women desperately fought for their cause, the police dragged them by their hair or clothing out of the building. Even with a group of only 150 strikers, the police enforced the injunction only by using substantial force. It would be nearly impossible to evict the thousands of workers barricaded in the Dodge Main plant, and the workers at the plant walked out in victory. Thus, even with conservative judges issuing sweeping injunctions, it had little impact on strikes of such magnitude. These union victories made unionism more popular, and with the increase of massive numbers of men involved in strikes, the injunctions became increasingly less effective. Therefore, the intertwining of these three influences: the rise and growing popularity of industrial unionism, the growing popularity of the jurisprudence of peaceful picketing, and last, the changing viewpoint of the federal government toward labor, served to have a major impact on the Michigan Supreme Court's reasoning on labor law.13

As Maurice Sugar grew in popularity, requests for his legal aid in strike matters grew immensely, and in 1939 he established a permanent legal department within the UAW and became the official legal council for the union. With Sugar at the helm, the department consisted of a handful of associate lawyers and office staff, and in February
1940, a small injunction case came across Sugar’s desk holding in its future major changes for Michigan labor law. As the UAW consolidated power, having won contracts with both GM and Chrysler, it continued to spread, winning contracts with smaller auto plants, parts manufacturing plants, and even garages and service stations. In January 1940 the UAW local 415 began to unionize Book Tower Garage, a large garage in downtown Detroit. J. B. Book Jr. ran his company on a strict open shop basis, having established the garage on the corner of State Street and Park Place in Detroit. His business had washed, serviced, and fixed cars on this corner for fourteen years. When Book learned that several of his workers were joining a union, he immediately fired any man who joined.14

Book’s employees, not satisfied with the open-shop policy held so strictly by the company, filed a complaint to Mr. A. C. Lappin of the Michigan Mediation Board on February 3. They claimed Book had disobeyed the new Labor Mediation Act, because he had fired workers who joined the union and threatened the remaining workers still in employment. The board set a hearing with the company on February 13 in order to discuss a union contract and the reinstatement of the six fired men. Before the hearings began, the local called a strike on February 10, and the men immediately left the garage and set up a picket line. George Stafford, the representative of the local, led the pickets as they marched up and down the sidewalk on shifts covering eighteen hours, from 7:00 in the morning until an hour after midnight the wee hours of 1:00 A.M. Approximately thirty-five men and women marched on the sidewalk bearing signs that stated “UAW-CIO Garage Workers Local 415- Have your car serviced by Union Men,” “Married Men
On February 13, the mediation board held the hearing to discuss the grievances of the strike, but it failed to produce much result, as Book informed them he would not negotiate on any of the terms and would not re-hire the fired workers. Since the delivery drivers working for Shell Oil Company refused to cross a picket line, no gas was delivered to the garage during the strike. In order to procure gas, Book had one driver deliver gas at six o’clock in the morning, but when that information leaked to the union members, they had a picket line in formation at six o’clock that morning and the driver refused to deliver the gas. An exasperated Book, in order to obtain gasoline, turned to a “commission distributor” of Shell and contracted G.C. Frohm & Son of Mt. Clemens. On February 21, George Frohm attempted to deliver gas to the garage, but the strikers frightened him so terribly he refused to deliver the gas. The strikers allegedly caused such a disruption the Detroit police were called to the scene and had to escort a terribly frightened Frohm back to his home.

Book also lost his main customer during the strike. Book Tower Garage supplied all of the garage services for the Book Cadillac Hotel, located just down the street from the garage. During the strike, the union men supplied a picket before the entrance to the hotel, holding a sign stating: “Chauffeurs get $.36 cents per hour- Company charges you $1.00.” On February 21, William Chittenden, manager of the hotel, informed Book that because of the strike, he could no longer supply business to the garage. The strike was working so effectively that Book was not only unable to receive gas, he lost his most valuable customer. J.B. Book Jr.’s next step was to seek an injunction.
On February 24, 1940, Book submitted a bill of complaint, complete with several affidavits denoting strikers' threats and violence to Judge Henry Nicols of the Wayne Circuit Court. Judge Nicols, a more liberal judge on the bench, was supportive of peaceful picketing and was known for his just rulings toward labor. He issued a temporary restraining order along with an order for the union to show cause on March 1. The union immediately turned to Maurice Sugar for help with the injunction. Jack Tucker, a long-time associate of Sugar and an attorney working for the UAW's legal department, submitted a request for modification to Judge Nicols on February 27. The bill requested that six pickets be allowed at each side of the garage, and one picket before the Book Cadillac Hotel, and Judge Nicols issued the modification. In the show cause hearing before the Judge on March 1, the Judge upheld his modified order and issued a temporary injunction allowing the limited number of pickets. Book, still fiercely anti-union, felt this modification was outrageous and had his lawyer, Edward Goodrich, submit an appeal to the Michigan Supreme Court.15

Goodrich argued in his appeal that this modification was unfair, and, if continued, it would cause irreparable injury to the business. They requested the modified order be set aside, the original injunction be re-instated and the Court issue an order for Judge Nicols to appear before the Court. The last time the Michigan Supreme Court ruled on the injunction was in 1922 in the minor case Bernard Schwartz v. Cigar Makers International Union. The Court issued only a short opinion in this case, upholding the previous precedent. It had been eighteen years since the Court's last ruling, and everyone familiar with the long stance of the Michigan Supreme Court expected the Court to immediately grant the request, but to the surprise of many, the Court remained silent.
The United Automobile Worker reported that Book filed an appeal according to the Beck case, and the Court “by refusing to grant the garage’s request the Supreme Court has now set itself free from the medieval shackles of the 1898 decision and cleared the road to bring itself in line with modern jurisprudence.” Jack Tucker reported “This is the most important step in the evolution of Michigan labor law.”

As the strike continued into the month of May, their court case before the Michigan Supreme Court received a major boost in their favor when, the United States Supreme Court ruled on April 22 in Thornhill v. State of Alabama and in Carlson v. The People of the State of California that peaceful picketing was a right guaranteed by the Constitution and overturned the ordinances in these states which prohibited any form of picketing. Jack Tucker, along with Sugar’s help, immediately filed a supplemental brief to the Michigan Supreme Court on April 25, arguing that the prohibition of peaceful picketing in Michigan was from the “decisions of this Court making it a part of the common law of this State.” Tucker argued that because the United State Supreme Court’s decisions declaring anti-picketing ordinances illegal, the Michigan Supreme Court’s precedent must be changed.

The leaders of the UAW were excited about the prospects of the United States Supreme Court ruling. UAW president R. J. Thomas stated “The fact that the supreme court threw out anti-picketing legislation should be controlling in the Book- Tower case, though the picketing ban in Michigan is not legislative. It rests solely on a 42- year old opinion of the state supreme court that has been antiquated by the march of social progress.” The outcome of the strike at the garage was uncertain. It did last at least until the middle of May, when the United Automobile Worker reported that Adolph
Massenrick, a strikebreaker hired by Book, was sentenced to four days in jail for trying to run down and injure a picket at the garage. After this incident, no mention was made concerning the strike in the UAW’s newspaper. The Court waited until December 10, 1940 to release their opinion, and almost exactly forty-two years after their first injunction case, the Court ruled that peaceful picketing was legal.\(^{19}\)

Henry Butzel, a former lawyer from Detroit and from a leading Jewish family actively involved in philanthropic endeavors throughout the city, carefully constructed the opinion for *Book Tower Garage v. Local no. 415*. After citing the background to the case, he summarized that the sole question of the case was whether peaceful picketing was lawful. Butzel stated “Any form of picketing was abhorrent in the common law. About 42 years ago this court adopted the viewpoint, in line with many other courts, that such activities may be enjoined.” But now the “Beck Case is inconsistent only in part with these recent decisions; they do not condone any interference with property rights by force or intimidation. It is the change in factual conditions since 1898 that leads to a different result. The ruling in the Beck Case and the later cases based thereon must be qualified by the decisions in the *Thornhill* and *Carlson Cases*.” Thus, in 1898, it was the view of many courts that picketing could not be peaceful, as the Court viewed the display of banners or signs as subterfuge and were intended to “intimidate and coerce.”

This early opinion, as Butzel asserted, was grounded in the common legal conclusions of the time and “such a conclusion of another year should not necessarily control the experience of today.” Pickets, once defined as annoying and intimidating had taken on a different meaning since 1898. A picket, as defined by the Webster’s Dictionary in 1940, was “A person posted by a labor organization at an approach to the
place of work affected by a strike to ascertain the workmen going and coming and to persuade or otherwise influence them to quit there.” Therefore the pickets no longer held the inherently “covert and unspoken threats” the Beck Case was based on. Butzel then noted that peaceful picketing was upheld by several courts in the state, and “The right of peaceful picketing has been upheld as an exercise of the right of free speech by the highest court in the land. Our legislative inactivity is no answer for denying a right secured by the fundamental law of the United States.” In a unanimous decision, the Michigan Supreme Court declared peaceful picketing legal, denied the writ of mandamus, and upheld Judge Nicols original modification order.20

This ruling made news all throughout Michigan and especially in Detroit. The Detroit Free Press wrote that “Until Tuesdays’ decision... there was no law in Michigan permitting peaceful picketing, although Circuit Courts in industrial areas had fallen into the practice of permitting peaceful picketing by refusing to enjoin it.”21 An editorial noted the“Michigan’s Supreme Court has reversed itself on the subject of picketing, and by so doing has proved once more the law is not a matter of cold statutes, but of changing custom and belief. There was no fundamental in the statutes; they merely ceased to mean, in one respect, what they had meant before. Change in thought of the people had brought about the necessity for a change in interpretation.”22

Oddly enough, this great legal victory for labor went unheeded in the UAW’s newspaper, as there was no record made of the Court’s final decision. While strange, this may have been because of the UAW’s active involvement in unionizing Ford and the simultaneous decision to outlaw Ford’s anti-leafleting ordinance in Dearborn overshadowed the Supreme Court’s decision to overturn their precedent. It may have
been that the UAW was already convinced in May that the Court would rule this way, and they had already celebrated the decision. Whatever the reason, this momentous victory slipped by little noticed and unsung.

As the United States entered the Second World War, the state’s involvement in labor entered a new era, forming the National War Labor Board to arbitrate all labor disputes during the war. By the War’s end, both labor leaders and Governmental officials lauded arbitration as the new panacea for any potential dispute and the strike fell out of favor with the increasingly conservative federal government. As the jurisprudence of peaceful picketing evolved through the war, and, as the government began to retreat from their progressive view of labor, the definition of what was peaceful picketing became more narrowly defined. But in December of 1940, the Court, under the influence of the changes occurring around them, changed as well, allowing labor the freedom of peaceful expression.
Notes


6 “Memo on Judge Toms,” Folder 17 Box 12 Maurice, Sugar Papers, Walter P. Reuther Library.

7 An *ex parte* injunction is an injunction issued based solely on the plaintiff’s bill of complaint, without allowing the defendants chance to answer.

8 *Darlington Bakery v. Piwowarski*, Folder 17 Box 12, Sugar Papers.

10 Ibid., 191-203.


14 Maurice Sugar to R.J. Thomas, April 24, 1939; Box 1 Folder 24 Maurice Sugar Papers and *Book Tower Garage v. Local no. 415*, record no. 41094 box 49, State Archives of Michigan

15 *Book Tower Garage v. Local no. 415* record no. 41094, box 49.

16 “Michigan Supreme Court Now Allows Some Union Picketing” *United Automobile Worker* 13 March 1940.

17 *Book Tower Garage v. Local no. 415*, “Supplemental Brief of Defendants and Appellees, Local 415” Box 24 Maurice Sugar Papers, Reuther Library.

18 “UAW Pushes Picketing Case: Michigan Court Ban Due for Knockout After U. S. Supreme Court Decisions” *United Automobile Workers* 1 May 1940.


21 “Order Limiting Cost in Detroit Is Thrown Out” *Detroit Free Press* 11 December 1940.

22 “Picketing Becomes Legal” *Detroit News* 12 December 1940.
BIBLIOGRAPHY

Primary Sources

Collections
The Labadie Collection in Special Collections at the Harlan Hatcher Graduate Library at the University of Michigan.

State Archives of Michigan, Michigan Historical Center, Department of History, Arts and Libraries

The Sugar Papers at Archives for Labor and Industrial Affairs and the Walter P. Ruether Library at Wayne State University.

Western Michigan University Archives and Regional History.

Court Cases


Beck v. Railway Teamsters’ Protective Union, 118 Mich. 499 (1898)


Ideal Manufacturing Co. v. Ludwig, 149 Mich. 133, 135 (1907).

Ideal Manufacturing Co. v. Wayne Circuit Judge, 139 Mich. 93 (1905).

In re Langell, 178 Mich. 305, 308 (1914).


Newspapers
Calumet News September –December 1913
Daily Mining Gazette September- December 1913
Detroit American 21 January 1910- 24 February 1912 (Labadie Collection).
Detroit Free Press 1897-1907, 1913, 1940
Detroit Sentinel 19 June 1897-8 April 1899 (Labadie Collection).
Detroit Today 1 April 1901-25 July 1901.
Detroit Times 1 January 1904- 3 July 1906.
Labor Day Review 1895-1908 (Labadie Collection).
Michigan Federationists 2 August 1928 – 8 February 1930 (Labadie Collection).
Michigan Union Advocate 1 January 1904-7 August 1908 (Labadie Collection).

Secondary Sources


