Boston College Law Review

Volume 14
Issue 6 *Number 6*

Article 6

7-1-1973

Labor Law -- Extortion -- Federal Criminal Liability for Strike Violence under the Hobbs Act -- United States v. Enmons

David G. Ries

CASE NOTES

Labor Law—Extortion—Federal Criminal Liability for Strike Violence under the Hobbs Act[1]—*United States v. Enmons*.[2]—Appellees, members and officials of Local 2286 of the International Brotherhood of Electrical Workers, were indicted under the Hobbs Act for an alleged conspiracy to obstruct commerce in the course of a strike against their employer, the Gulf States Utilities Company. The indictment charged that the appellees conspired to use and did use violence to obtain higher wages and other benefits from the Company for its employees. Appellees were charged with five specific acts of violence aimed at destroying the Company's transformers. The Government maintained that this action was within the Act's prohibition of "extortion" which is defined as "the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear. . . ."[3] The Government thus claimed that the wages sought were "property" of the employer and that strike violence to obtain such "property" is a violation of the Act.

The trial court granted appellees' motion to dismiss the indictment for failure to state an offense under the Hobbs Act.[4] The district court ruled that the use of force to obtain legitimate union objectives during a lawful strike is not a violation of the Hobbs Act. In the court's view, the Hobbs Act would apply in this kind of situation only if the strikers were using violence to obtain "wages to be paid for unneeded or unwanted services, or for no services at all."[5]

The Supreme Court reviewed the case on direct appeal[6] and, in affirming the district court's dismissal, HELD: violence committed during a lawful strike for the purpose of inducing an employer's agreement to legitimate collective bargaining demands concerning compensation for services desired by or valuable to the employer does not constitute "extortion" under the Hobbs Act. The Court reached this decision through its interpretation of "extortion" in the Hobbs Act. In the Court's view, there can be extortion only where there is "a wrongful obtaining of property." This is true because the word "wrongful" in the statute, to have any meaning, must be construed to modify "obtaining of property." Under this analysis, union activity which is aimed at obtaining legitimate union goals, such as wages for

---

[1] 18 U.S.C. § 1951 (1970).

[2] — U.S. —, 93 S. Ct. 1007 (1973).

[3] 18 U.S.C. § 1951(b)(2) (1970).

[4] 335 F. Supp. 641, 79 L.R.R.M. 2074 (E.D. La. 1971).

[5] Id. at 645, 79 L.R.R.M. at 2076.

[6] The Supreme Court allowed the appeal under the Criminal Appeals Act, ch. 2564, 34 Stat. 1246 (1907), which provided for direct appeal to the Supreme Court of certain dismissals of indictments. The present statute, 18 U.S.C. § 3731 (1970), provides for appeal to a circuit court of appeals, but this action was instituted before the new provision took effect.

genuine services desired by the employer, cannot be extortion. In such a case, there is no "wrongful obtaining of property" because the workers have a legitimate claim to the wages.[7]

The Court's decision definitively places strike violence practiced for the usual objectives of strikes outside the reach of the federal criminal law with its severe felony penalties and thereby leaves control of such violence to the states. The precise degree to which federal law which prohibits violence interfering with interstate commerce applies to union activities has been unclear since the passage of the Anti-racketeering Act of 1934,[8] the predecessor of the Hobbs Act. When the Antiracketeering Act was given a restrictive interpretation in a labor context by the Supreme Court,[9] Congress responded with the Hobbs Act which expanded the Antiracketeering Act's coverage of labor activities. The present case establishes a limit to that expanded coverage. This note will examine the history of federal treatment of labor violence which affects interstate commerce and analyze the present Supreme Court decision and its implications in light of that history. More specifically, the legislative background of the Hobbs Act will be discussed, especially with reference to the Antiracketeering Act of 1934, the Supreme Court's decision interpreting that Act in *Teamsters Local 807*[10] and Congressional reaction to that case. The note will then review the only prior Supreme Court case interpreting the Hobbs Act in a labor context, *United States v. Green*.[11] A discussion of the *Enmons* opinion will follow. Finally, the state of federal law prohibiting strike violence will be discussed in light of *Enmons*.

The Supreme Court's decision in *Enmons* relied to a great extent on the legislative history of the Hobbs Act. That legislative history begins with the Antiracketeering Act of 1934. Basically, the Anti-racketeering Act prohibited the use of, attempts to use or threats to use force, violence or coercion to obtain money or other valuable consideration when such action affected interstate commerce.[12] According

---

[7] 93 S. Ct. at 1010.

[8] Act of June 18, 1934, ch. 569, 48 Stat. 979-80.

[9] United States v. Teamsters Local 807, 315 U.S. 521 (1942). See text at note 16 infra.

[10] Id.

[11] 350 U.S. 415 (1956).

[12] Section 2 of the Antiracketeering Act provides that:

> Any person who, in connection with or in relation to any act in any way or in any degree affecting trade or commerce or any article or commodity moving or about to move in trade or commerce—
>
> (a) Obtains or attempts to obtain, by the use of or attempt to use or threat to use force, violence, or coercion, the payment of money or other valuable considerations, or the purchase or rental of property or protective services, not including, however, the payment of wages by a bona fide employer to a bona fide employee; or
>
> (b) Obtains the property of another, with his consent, induced by wrongful use of force or fear, or under color of official right; or
>
> (c) Commits or threatens to commit an act of physical violence or physical

to the chairman of the House committee which reported on the bill, it was one of a number of bills aimed at the activities of gangsters "of the Kelly and Dillinger types."[13] The Act contained three provisions which placed severe restrictions on its possible application to labor situations. Sections 2(a) and 3(b) of the Act[14] exempted payment of "wages by a bona fide employer to a bona fide employee" from the definition of property whose acquisition by use of force would violate the Act, while section 6[15] provided that no court could construe the Act as limiting the rights of a bona fide labor organization in carrying out its legitimate objectives. The Antiracketeering Act thus did not cover violence in the ordinary strike where employees were seeking wages and benefits from their employer. The uncertainty arose in the Act's application to other cases of labor violence such as violent action forcing an employer to hire union employees.

The Supreme Court was faced with an application of the Antiracketeering Act in a labor context in *United States v. Teamsters Local 807*.[16] The defendants in this criminal proceeding were the local, two officials, and twenty-six individual members of the local. Up to the time of the events for which the defendants were indicted, drivers of out of state trucks had delivered their cargoes in New York City and picked up other cargoes to return to other states. The evidence established that the defendants conspired to use violence and did use violence and threats of violence to obtain from the owners of the trucks the regular union rate for a day's work of driving and unloading. When the forced compensation was paid, the union members sometimes performed the services and sometimes did not—either because the owners or drivers turned them down or because the teamsters refused to perform the services. Eventually, many of the owners signed contracts with the union agreeing that members of the local would do all of the driving, loading and unloading within the city at the regular union rates.[17]

The defendants were convicted in federal district court under varying counts of the indictment.[18] The Court of Appeals for the Second Circuit reversed the conviction on the ground that the trial court's charge to the jury did not make it clear that the labor exceptions to the Antiracketeering Act[19] take such activities out of the reach of the

injury to a person or property in furtherance of a plan or purpose to violate subsections (a) or (b); or

(d) Conspires or acts concertedly with any other person or persons to commit any of the foregoing acts, shall, upon conviction thereof, be guilty of a felony . . . .

Act of June 18, 1934, ch. 569, § 2, 48 Stat. 979-80.

[13] S. Rep. No. 1440, 73d Cong., 2d Sess. (1942).

[14] Act of June 18, 1934, ch. 569, §§ 2(a), 3(b), 48 Stat. 980.

[15] Act of June 18, 1934, ch. 569, § 5, 48 Stat. 980.

[16] 315 U.S. 521 (1942).

[17] Id. at 525-26.

[18] 118 F.2d 684, 685, 8 L.R.R.M. 468 (2d Cir. 1941).

[19] Act of June 18, 1934, ch. 569, §§ 2(a), 3(b), 5, 48 Stat. 980.

Act when the defendants actually intend to perform the work for which the payment is sought.[20] The court ruled that this kind of action by employees or prospective employees would violate the Act only if they intended to receive payment without rendering any services.[21] In affirming the court of appeals, the Supreme Court held that there is no violation of the Antiracketeering Act when the defendants' purpose in seeking payments is actually to perform services in return for the payments—even if the employer refuses to accept the services. The Court reached this position by deciding that the section 2(a) exemption for the payment of wages by a bona fide employer to a bona fide employee[22] removed this kind of situation from the coverage of the Act. The Court interpreted the wage exception in this way for two reasons. First, it found that exclusion of those seeking employment from the exemption would be inconsistent with legislative intent because it would exclude too broad a class of labor disputes from the coverage of the labor exemption.[23] In addition, the Court interpreted the term "any person" at the beginning of section 2 as modifying the entire section so that the exemption removes "any person who . . . obtains or attempts to obtain . . . the payment of wages from a bona fide employer to a bona fide employee," from the coverage of the Act.[24] Under this view, the exemptions covered persons who are seeking bona fide employment as well as those who are already employees.[25] The Court's decision in *Local 807* thus left the Antiracketeering Act's application to labor disputes very limited. As long as those demanding payment had an intention of performing services, they were protected from federal prosecution even if the services were unwanted or superfluous. The only activity in a union situation which survived *Local 807* as a clear violation of the Act was violence in connection with demands for compensation for no services or for services which the actors had no intention of rendering.[26]

Adverse congressional reaction swiftly followed the Supreme Court's decision in *Local 807*. It was referred to as an "amazing decision"[27] and one Congressman claimed that it "legitimatized highway robbery when committed by a labor goon."[28] Several bills were introduced to overrule the Supreme Court's decision through legislation, and they met with varying degrees of success.[29] The Hobbs Act finally

---

[20] 118 F.2d 684, 8 L.R.R.M. 468 (2d Cir. 1941).

[21] Id. at 686, 8 L.R.R.M. at 468.

[22] Act of June 18, 1934, ch. 569, § 5, 48 Stat. 980.

[23] 315 U.S. at 531.

[24] Id. For the text of section 2, see note 12 supra.

[25] Id.

[26] Id. at 534.

[27] 91 Cong. Rec. 11,900 (1945) (remarks of Congressman Hancock).

[28] 91 Cong. Rec. 11,841 (1945) (remarks of Congressman Cox).

[29] S. 2347, 77th Cong., 2d Sess. (1942); H.R. 6872, 77th Cong., 2d Sess. (1942); H.R. 7067, 77th Cong., 2d Sess. (1942); H.R. 653, 78th Cong., 1st Sess. (1943); H.R. 32, 79th Cong., 1st Sess. (1945).

emerged as the product of these congressional efforts to strengthen federal criminal sanctions for labor violence interfering with commerce.

The Hobbs Act defined the prohibited interference in terms of robbery and extortion instead of proscribing interference in general terms, and it also provided for punishment of a conspiracy or attempt to violate its provisions.[30] The extortion prohibition is the provision of the Act which could apply to labor situations. The Act defines extortion as the obtaining of another's property with his consent induced by wrongful force, violence or fear.[31] In drafting the new Act, Congress attempted to reconcile two somewhat competing aims. On the one hand, it wanted to put more teeth into the statute in order to cover situations where labor overstepped its bounds. On the other hand, Congress wanted to accomplish this aim without interfering with the legitimate activities of organized labor. In order to prevent a recurrence of the Supreme Court's treatment of the Antiracketeering Act, the labor exemptions[32] were left out of the new Act.[33] In their place, a provision[34] was inserted[35] declaring that the act was "not to be construed to repeal, modify or affect" the Norris-LaGuardia Act,[36] the Clayton Act,[37] the Railway Labor Act,[38] or the National Labor Relations Act.[39] Unions would thus continue to have the protection of the major federal statutes defining their rights.

At this point, it was clear that violence or threats of violence to obtain payments for no work at all or for work which the actor had no intention of performing remained a violation of federal criminal law. The Supreme Court had decided that such action violated the Antiracketeering Act,[40] the leniency of which the Hobbs Act was intended to correct. If the Hobbs Act was successful in achieving its objective of changing the result of *Local 807*, there would be a violation of its provisions where violence or the threat thereof was used to obtain wages for services for which the employer had no desire or need. Although the statute appeared to achieve this result on its face, the question remained whether the courts would frustrate this purpose

---

30 Title I of the Hobbs Act, codified at 18 U.S.C. § 1951(a) (1970), provides that: Whoever in any way or degree obstructs, delays, or affects commerce . . . by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined not more than $10,000 or be imprisoned not more than twenty years, or both.

31 18 U.S.C. § 1951(b)(2) (1970).

32 Act of June 18, 1934, ch. 569, §§ 2(a), 3(b), 5, 48 Stat. 980.

33 91 Cong. Rec. 11,912 (1945) (remarks of Congressman Hobbs).

34 18 U.S.C. § 1951(c) (1970).

35 H.R. Rep. No. 238, 79th Cong., 1st Sess. 10 (1945).

36 29 U.S.C. §§ 101-15 (1970).

37 15 U.S.C. §§ 12-27, 44 (1970); 29 U.S.C. § 52 (1970).

38 45 U.S.C. §§ 151-63, 181-88 (1970).

39 29 U.S.C. §§ 151-66 (1970).

40 United States v. Teamsters Local 807, 315 U.S. 521 (1942).

through a restrictive interpretation.[41] A second question presented by the Hobbs Act was whether or not its provisions would apply when the violence or force was used to induce an employer to give compensation for services which he needed and wanted.[42] The Supreme Court answered the first of these questions in its 1956 decision of *United States v. Green*,[43] and the second, at least in part, in *Enmons*. In *Green*, the only Supreme Court decision prior to *Enmons* dealing with the Hobbs Act in a labor context, the Court held that a union and a union official were properly indicted under the Hobbs Act for using threats of violence to obtain wages for unwanted and unneeded work. The Court thereby decided that the Hobbs Act had accomplished its purpose of changing the result in *Local 807*. The union local and official in *Green* were charged with using threats of force to persuade a contractor to hire union laborers to scout ahead of each of his bulldozers to warn of approaching pitfalls. The employer did not want the laborers and saw no need for them. He had always done such work in the past without laborers. Union members resorted to threatened violence to change the employer's mind.[44]

The Supreme Court reversed the district court's grant of a motion in arrest of judgment and held that force, violence or threats used to obtain compensation for "imposed, unwanted, superfluous and fictitious services" is a violation of the Hobbs Act.[45] The Court reached this decision in spite of its then recent rulings[46] that union efforts to secure "make work" for their members were not unfair labor practices under the Taft-Hartley Act's prohibition against forcing an employer to accept "featherbedding."[47] In the Taft-Hartley cases, the Court had

---

[41] Some observers believed that the Hobbs Act did not accomplish its purpose of changing the result in *Local 807*. Note, Labor Law—A New Federal Antiracketeering Law, 35 Geo. L.J. 362, 366 (1947); Note, Labor Faces the Amended Anti-Racketeering Act, 101 U. Pa. L. Rev. 1030, 1042 (1953).

[42] For an analysis of the ambiguity that remained after the enactment of the Hobbs Act, see Note, The Hobbs Act—An Amendment to the Federal Anti-Racketeering Act, 25 N.C.L. Rev. 58 (1946).

[43] 350 U.S. 415 (1956).

[44] The facts referred to here are contained in the Seventh Circuit's decision reviewing the district court opinion after remand from the Supreme Court. United States v. Green, 246 F.2d 155, 158, 40 L.R.R.M. 2343 (7th Cir. 1957).

[45] 350 U.S. at 417. The Supreme Court did not find that the particular work for which compensation was sought in *Green* was in fact "imposed, unwanted, superfluous and fictitious." The Court held only that an allegation that compensation was wrongfully sought for work in that category states an offense under the Hobbs Act. Id. at 421. The union could have argued that the compensation was for work necessary as a safety precaution and that the dispute was therefore over a legitimate condition of employment.

[46] American Newspaper Publishers Ass'n v. NLRB, 345 U.S. 100 (1953); NLRB v. Gamble Enterprises, Inc., 345 U.S. 117 (1953).

[47] Section 8(b)(6) provides that:

> It shall be an unfair labor practice for a labor organization or its agents— . . .
> (6) to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed . . . .

29 U.S.C. § 158(b)(6) (1970).

held that union activity aimed at forcing an employer to hire stand-by help did not violate the Taft-Hartley Act unless the employees did not intend to perform even that work. In *Green*, the Court upheld a Hobbs Act indictment which did not contain any allegation that the workers did not intend to perform the work. The Court pointed out that the district court had improperly relied on the Supreme Court's decisions in the Taft-Hartley cases as a basis for a decision that there was no violation of the Hobbs Act.[48] The Court apparently recognized that the Taft-Hartley Act and the Hobbs Act were addressed to different types of work: the Taft-Hartley Act prohibits seeking compensation for work which the union has no intention of performing; the Hobbs Act is concerned with unnecessary or unwanted work even though the union or members intend to perform this work. The Court thus found a violation of the Hobbs Act through a classification, independent of the other federal labor acts, of the categories of work for which compensation is sought. The Court's decision in *Green*, then, established the fact that the Hobbs Act was successful in its purpose of extending coverage to the area of violence to obtain payment for unneeded or unwanted work. The remaining question was how far the courts would apply the Hobbs Act beyond merely changing the result in *Local 807*.

In *United States v. Enmons*, the Supreme Court addressed itself to further delineation of the Hobbs Act. In this case, the Court placed an important limitation on the Act in its application to labor cases by putting "legitimate union objectives" sought in a "lawful strike" outside the scope of the "wrongful obtaining of property" necessary for a violation of the Act. The Court ruled that if employees or prospective employees use force, violence or threats during a lawful strike to obtain compensation for actual work needed by the employer, their action is beyond the reach of the Hobbs Act. Obtaining compensation for such work is not "wrongful" because the workers have a legitimate claim to the wages. In reaching this conclusion, the Court reasoned that: "In that type of case, there has been no 'wrongful' taking of the employer's property; he has paid for the services he bargained for, and the workers receive the wages to which they are entitled in compensation for their services."[49]

The Government took the position in *Enmons* that the appellees' action of destroying transformers to induce the employer's agreement to collective bargaining demands is clearly prohibited by the statute on its face. The statute defines "extortion" as "the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear . . . ."[50] It was the Government's contention that appellees' conduct fell within the literal prohibition of this section. The workers conspired to obtain the employer's property, in this case wages, with his consent induced by wrongful use of vio-

[48] 350 U.S. at 418.
[49] 93 S. Ct. at 1010.
[50] 18 U.S.C. § 1951(b)(2) (1970).

lence.[51] The Court declined to accept the Government's contention and stated that the language of the statute and its legislative history required it to reach the opposite result. In addition, the Court found that the Government's view of the statute would lead to undesirable difficulties in its application.

The Court did not find the language of the statute to be as unambiguous as the Government maintained it was. In the Court's view, the term "wrongful" would be superfluous if it modified only the enumerated means of obtaining property.[52] "Wrongful" must be interpreted as limiting the coverage of the statute to cases where obtaining the property is wrongful. In the Court's view, there is no violation of the statute where the actor has a lawful claim to the property in the way that workers have to wages for genuine services.[53] Such a taking of property—*i.e.*, wages—could not be "wrongful." The Court's analysis in this area is very persuasive, especially in light of Congressman Hobbs' remark in the House debates that "wrongful" was to modify the entire section of the statute.[54] The language of the statute, especially in light of this clarification from its sponsor, is sufficient to support the Court's decision in the case.

The Court also found support for its view in the legislative history of the Act. It pointed to many instances throughout the debates where congressmen made statements which support the Court's limited reading of the statute.[55] It is clear from the overall legislative history that the main concern of those involved in the Act's preparation and passage was the type of union activity involved in *Local 807*.[56] The committee hearings are filled with testimony of victims who had suffered the same injustice as the truck owners in *Local 807*.[57] The committee report on the Hobbs Act simply quoted the full opinion of the Supreme Court in *Local 807* and went on to state that the bill was designed to "prevent interference with insterstate commerce, by robbery or extortion, as defined in the bill . . . ."[58] The Court's reference to the statement by Congressman Hobbs statement which expressly supports the Court's interpretation gives added credence to the result reached by the majority. Congressman Hobbs specifically stated that the Act would not apply to picket line violence during a lawful strike.[59] This statement

[51] 93 S. Ct. at 1009. The dissent, consisting of Chief Justice Burger and Justices Douglas, Powell and Rehnquist, substantially accepted the Government's interpretation of the statute. In addition, the dissent contended that the legislative history supports this interpretation. Id. at 1016-19.

[52] Id. at 1009-10.

[53] Id. at 1010.

[54] Id. at 1009 n.2.

[55] 91 Cong. Rec. 11,839-48, 11,899-922 (1945).

[56] Id.

[57] Hearings on Injunctions Against Illegitimate Labor Practices and Outlawing Racketeering Before Subcomm. No. 3 of the House Comm. on the Judiciary, 77th Cong., 2d Sess. (1942).

[58] H.R. Rep. No. 238, 79th Cong., 1st Sess. 1 (1945).

[59] 89 Cong. Rec. 3213 (1943) (remarks of Congressman Hobbs).

supports the Court's interpretation in spite of the fact that it was made two years before the Act was passed and was made in reference to an earlier version of the bill. The version that ultimately became the Hobbs Act is substantially the same as the earlier version.[60] There are some statements in the congressional debates which are consistent with the Government's interpretation of the Act,[61] but there is a noticeable absence of a clear statement which actually supports that interpretation.

If the Government's view were to be accepted, the Court pointed out, there would be difficulty in restricting the Act's application. The "worker who threw a punch on a picket line" or "the striker who deflated the tires on his employer's truck" would be subject to harsh felony penalties.[62] Although it would be possible to carve out a judicially-created exception to the statute to preclude its application in situations involving only minor violence, such an exception would require a departure from the language of the statute. The point that Congress would not desire such a harsh result as felony penalties for minor violence, yet did not include an exception for minor incidents, supports the Court's interpretation of the statute.

The majority's interpretation of the Hobbs Act in this case appears to be the proper one in light of the Act's language and legislative history. Any expansion of the Act's coverage should be made legislatively and not judicially.

The Supreme Court's decision in *Enmons* brings more clarity to the area of federal policing of strike violence, but a significant degree of uncertainty remains. It is still clear that, as *Green* held, force or threats of force to obtain compensation for unwanted or unneeded services, or for no services at all, violates the Hobbs Act.[63] The uncertainty that remains is in cases where the payment is sought for services desired by or valuable to the employer. Within this area, it is clear that violence or threats of violence during a lawful strike to obtain legitimate collective bargaining demands concerning services desired by or valuable to the employer does not violate the Hobbs Act. The remaining question is where the line will be drawn within the area of cases involving services desired by or valuable to the employer.

Throughout its opinion in *Enmons*, the Supreme Court continually makes reference to such terms as "lawful strike" and "legitimate collective bargaining objectives."[64] In addition, the Court approvingly refers to such language used by the district court as "the strike and

[60] 93 S. Ct. at 1012 n.14.

[61] 91 Cong. Rec. 11,843 (1945) (remarks of Congressman Michener); 91 Cong. Rec. 11,918 (1945) (remarks of Congressman Baldwin); 91 Cong. Rec. 11,914 (1945) (remarks of Congressman Mercantonio); 91 Cong. Rec. 11,916 (1945) (remarks of Congressman Biemiller).

[62] 93 S. Ct. at 1015.

[63] 350 U.S. 415 (1956).

[64] 93 S. Ct. at 1009, 1012, 1014, 1015.

its objectives of higher wages were legal" and the defendants were "lawfully striking."[65] It is submitted that the significance and the scope given to such terms will provide the answer to the question of where the courts will draw the line between lawful and unlawful conduct under the Hobbs Act. There are basically two interpretations that these terms can be given in future applications of the Hobbs Act. First, they can be viewed as establishing separate standards in addition to the standard of examining the types of work for which compensation is sought.[66] Under this view, violence or threats of violence to obtain payment for genuine services would violate the Hobbs Act where the strike is "unlawful" or the collective bargaining demands are "illegitimate." The other interpretation is that these terms merely provide a standard which is synonymous with the standard of examining the work for which payment is sought. Under this latter interpretation, an "unlawful strike" would be, for purposes of the Hobbs Act, a strike directed toward the obtaining of compensation for unwanted or unneeded work; likewise, an illegitimate collective bargaining objective would be synonymous with compensation for unwanted or unneeded work. This view would preclude finding a violation of the Hobbs Act in any case in which the objective of the labor activity is compensation for work desired by and useful to the employer.

If the terms "lawful strike" and "legitimate collective bargaining objective" are treated as independent standards, it will be necessary to determine exactly what an "unlawful strike" is and what constitutes "illegitimate collective bargaining objectives." These terms would presumably be defined through an analysis of national labor policy. The major federal labor statutes and their interpretations can be viewed as together establishing a national labor policy.[67] The most logical way of defining an unlawful strike or an illegitimate collective bargaining goal is in light of this national policy. The provision of the Hobbs Act which protects the major labor acts from modification[68] shows that Congress considered national labor policy when it passed the Act. Interpretation of the Act in light of this policy would therefore be consistent with congressional intent.

Under these federal labor acts, certain union objectives are expressly made unlawful, for example, forcing an employer to recognize a union as a bargaining agent when there is already a certified union representing his employees[69] or forcing an employer to enter into a hot cargo contract.[70] When violence or threats of violence are used to

---

[65] Id. at 1009.

[66] Note, The Hobbs Act—An Amendment to the Federal Anti-Racketeering Act, 25 N.C.L. Rev. 58, 62 (1946).

[67] The Supreme Court accepted the proposition that other statutes should be applied to labor in light of the policy of the labor statutes when it applied antitrust laws to a labor union in UMW v. Pennington, 381 U.S. 657, 665 (1965).

[68] 18 U.S.C. § 1951(c) (1970).

[69] 29 U.S.C. § 158(b)(4)(C) (1970).

[70] Section 8(b)(4)(A) makes it an unfair labor practice for a union to strike in

obtain such goals, the activity could be found to be a "wrongful taking of property" under the "legitimate collective bargaining objectives" language of *Enmons*. Under this analysis of *Enmons*, this kind of activity would therefore violate the Hobbs Act. For reasons that will be discussed below,[71] it is submitted that this interpretation would give an overly broad scope to the Act.

Certain kinds of strikes are also forbidden by the federal labor statutes even if they are aimed at legitimate goals. For example, a work stoppage over grievances, which violates a no-strike clause of a contract, is unlawful and in some cases may be enjoined under section 301(a) of the National Labor Relations Act.[72] In addition, such union actions as mass picketing which blocks entrance and exit[73] or padlocking gates used by other employees[74] sometimes amounts to restraint or coercion of other employees in violation of the Taft-Hartley Act[75]—even when these tactics are used to obtain legitimate union goals. If violence or threats of violence are used in this kind of strike, a violation of the Hobbs Act could be found under a literal application of the "lawful strike" language of *Enmons*. It is submitted that this too would be an overly broad interpretation of the Act.[76]

Although an isolated reading of the "lawful strike" and "legitimate collective bargaining objective" language of *Enmons* could support the above analysis, it is submitted that "unlawful strikes" and "illegitimate collective bargaining demands", as used by the Court in *Enmons*, should be read respectively for the purposes of the Hobbs Act as being synonymous with "strikes seeking unwanted or unneeded work" and "unwanted or unneeded work." This approach is more consistent with legislative intent both of the Hobbs Act and the labor statutes and can be reconciled with the Supreme Court's opinions in *Green* and *Enmons*.

order to induce an employer to enter into a contract which violates section 8(e). 29 U.S.C. § 158(b)(4)(A). Section 8(e) forbids hot cargo contracts, which are agreements under which the employer "ceases or refrains . . . from handling, using, selling, transporting or otherwise dealing in any of the products of any other employer . . . ." 29 U.S.C. § 158(e) (1970).

[71] See text following note 76 infra.

[72] 29 U.S.C. § 185(a) (1970). The Supreme Court held in Boys Market, Inc. v. Retail Clerks Local 770, 398 U.S. 235 (1970), that an injunction in such a case is not precluded by the Norris-LaGuardia Act. See Note, 12 B.C. Ind. & Com. L. Rev. 295 (1971).

[73] NLRB v. UMW, 418 F.2d 240, 72 L.R.R.M. 2784 (3d Cir. 1969).

[74] International Ass'n of Machinists (General Electric Co., Protective Device Dep't), 183 N.L.R.B. No. 126, 75 L.R.R.M. 1094 (1970).

[75] 29 U.S.C. § 158(b)(1)(A) (1970).

[76] It would be possible to give an even broader interpretation to the terms "legitimate collective bargaining demands" and "lawful strikes." Under this approach, a violation of the Hobbs Act could be found where the threats or violence involved violated state labor laws. This approach would, of course, be limited to cases where the action affected interstate commerce and there was no federal preemption of the area. Such an interpretation would be impractical because it would leave the Hobbs Act too open-ended. There would be great difficulty in finding limits to its coverage. A clearer indication by Congress should be required to reach the position that such a radical change in federal labor policy was intended.

First, criminal penalties based on violations of the noncriminal provisions of the other labor acts would be inconsistent with legislative intent under these labor statutes and under the Hobbs Act. The Hobbs Act supplements existing national labor policy established by the other federal labor statutes. The Act establishes a clear congressional mandate that the use of force, violence or threats thereof to obtain payment for unwanted or unneeded work or for no work at all is a federal criminal offense if it affects commerce. Finding a violation based on an "unlawful strike" or on "illegitimate collective bargaining demands" presents a different situation. There is no clear mandate in the Hobbs Act that the legality of the strike or the legitimacy of the collective bargaining demands is to have any effect under the statute. Congress has already provided noncriminal remedies for violations of this kind of provision of the labor statutes and it is unlikely that it would intend to apply criminal sanctions through such an indirect approach. The inclusion in the Hobbs Act of the section preventing any changes in the labor acts[77] indicates that Congress took the labor acts into consideration when it passed the Hobbs Act. In light of this, a clearer expression of legislative intent should be required to give "wrongful" such a broad interpretation. A contrary view would require the conclusion that Congress intended to apply the harsh felony penalties of the Hobbs Act to even minor incidents of violence solely because the compensation which the worker was seeking was improper under the labor acts. Under such a view, a minor act of violence, such as breaking a window in a strike aimed at forcing an employer to recognize a union when his employees already have a certified union, would subject the worker to federal felony penalties. It is unlikely that Congress intended such a harsh result in the Hobbs Act. Indeed, the Supreme Court, in *Enmons*, rejected the application of the harsh penalties of the Hobbs Act to such minor incidents of violence.[78]

The legislative history of the Hobbs Act indicates that it had the limited purpose of changing the result of *Local 807*. During the House debates on the Act, Congressman Cox remarked: "The sole purpose of the bill is to undo the outrageous opinion of the Supreme Court in the Teamsters Union case."[79] That case excluded from the coverage of the Antiracketeering Act union activities aimed at obtaining wages for unwanted and unneeded work.[80] If the sole purpose of the Hobbs Act was to change that result, it should apply only where the force or threats are aimed at obtaining compensation for unwanted or unneeded work or for no work at all. The Act should not apply where workers are seeking payment for work needed by or desired by an employer. The Supreme Court recognized this limited purpose of the Hobbs Act in *Enmons*:

---

[77] 18 U.S.C. § 1951(c) (1970).
[78] 93 S. Ct. at 1015.
[79] 91 Cong. Rec. 11,841 (1945).
[80] 315 U.S. 521 (1942).

> [A]s frequently emphasized on the floor of the House, the limited effect of the bill was to shut off the possibility opened up by the *Local 807* case, that union members could use their protected status to exact payments from employers for imposed, unwanted, and superfluous services.[81]

This narrow view of the scope of the Hobbs Act is therefore supported by the legislative intent of the Hobbs Act and the Supreme Court's interpretation of that legislative intent.

The Supreme Court's interpretation of the Hobbs Act in *Green* is consistent with this narrow approach to the Act's coverage. In *Green*, a violation of the Hobbs Act was found on the basis of conduct which may not have violated the Taft-Hartley Act.[82] The Court thus analyzed the type of work for which compensation was sought without relying on the lawfulness or unlawfulness of the union's conduct under the Taft-Hartley Act. This is consistent with the approach adopted in the present analysis.

A limited construction is also consistent with the Supreme Court's opinion in *Enmons*, although it is not required by the opinion. The Court recognized that the Hobbs Act was intended to have the limited effect of extending coverage of federal criminal law to cases involving the seeking of compensation for unwanted or unneeded services. In the decision, the Court provides only one example of union objectives which are not legitimate—seeking "personal payoffs" or payment of wages for "unwanted or fictitious services."[83] On the other hand, the only legitimate collective bargaining objective to which the Court makes reference is "higher wages in return for genuine services which the employer seeks."[84] The terms "legitimate collective bargaining objectives" and "lawful strikes" can thus be interpreted as alternative ways of saying that the term "wrongful" applies to cases where property is obtained for work that is unwanted or unneeded by the employer or for not work at all.

In *Enmons*, the Supreme Court has decided that the Hobbs Act does not reach some incidents of strike violence which interfere with commerce. The clear situation in which the Act does not apply is that of legal strikes for legitimate collective bargaining objectives where the workers intend to perform legitimate work for the compensation. At the other extreme is the situation where the Act clearly does apply, the case of forcing an employer to provide compensation for unnecessary or unwanted work or for no work at all. Although it is not entirely clear where conduct between these extremes will fall, the approach outlined above provides a method of resolving this question consistent with the legislative purpose and the Supreme Court's past treatment of the Hobbs Act.

---

[81] 93 S. Ct. at 1011.

[82] See text at note 46 supra.

[83] 93 S. Ct. at 1010.

[84] Id.

Wherever the line is drawn, it will have important ramifications in labor activities. Where the Hobbs Act does not apply, the employee is saved from possible severe federal criminal penalties while the employer is forced to resort to the noncriminal remedies of the federal labor acts or to state criminal law for protection.

DAVID G. RIES

Copyright—Infringement of Dramatico-Musical Rights—ASCAP License—*Robert Stigwood Group Ltd. v. Sperber*.[1]—The Robert Stigwood Group Limited (Stigwood) is the holder of the dramatic rights[2] to the opera *Jesus Christ Superstar*. Stigwood, in a suit alleging copyright infringement and unfair competition, moved for a preliminary injunction[3] to enjoin the defendant, Original American Touring Company (OATC),[4] (1) from performing the opera *Jesus Christ Superstar* or portions thereof; (2) from referring to *Jesus Christ Superstar* in advertisements for performances of musical compositions from the opera;[5] and (3) from using the name "The Original American Touring Company" in conjunction with performances of the musical compositions.[6]

OATC, which performed twenty of the twenty-three songs from *Jesus Christ Superstar* in the identical sequence that they appear in the opera, with one exception, contended that these performances were permitted by its American Society of Composers, Authors and Pub-

[1] 457 F.2d 50 (2d Cir. 1972), modifying 332 F. Supp. 1206 (S.D.N.Y. 1971).

[2] The authors of the work *Jesus Christ Superstar* assigned the rights in the work (except "King Herod's Song") to Leeds Music Ltd., which copyrighted the entire opera as a "dramatico-musical composition" pursuant to 17 U.S.C. § 5(d) (1970) and several of the individual songs as "musical compositions" pursuant to 17 U.S.C. § 5(e) (1970). The individual musical compositions to *Jesus Christ Superstar* are protected by copyrighting the opera. 17 U.S.C. § 3 (1970). Leeds Music Ltd. assigned the United States copyrights to *Jesus Christ Superstar* and to the several individual songs to Leeds Music Corp. pursuant to 17 U.S.C. § 28 (1970). The separate rights and privileges arising from a copyright may be licensed. First Financial Marketing Services Group, Inc. v. Field Promotions, Inc., 286 F. Supp. 295, 298 (S.D.N.Y. 1968); Hirshon v. United Artists Corp., 243 F.2d 640, 643 (D.C. Cir. 1957). Stigwood acquired the rights for stage productions and dramatic presentations of the opera from Leeds Music Corp. 457 F.2d at 51-52.

[3] Robert Stigwood Group Ltd. v. Sperber, 332 F. Supp. 1206, 1207 (S.D.N.Y. 1971).

[4] "The Original American Touring Company" (OATC) is the name under which defendant booking agent, Betty Sperber, does business. The defendants put on concerts which are represented as being performed by the Original American Touring Company. The business details of the concerts are handled by Betty Sperber Management of which Betty Sperber is President. 457 F.2d at 52.

[5] OATC was authorized to perform individual musical compositions to the opera *Jesus Christ Superstar* as a licensee of the American Society of Composers, Authors and Publishers (ASCAP). The ASCAP license permits the licensee to perform non-dramatic renditions of the separate musical compositions copyrighted by the members of the Society. OATC's license extends to the songs from *Jesus Christ Superstar* since Leeds Music Corp., from which Stigwood acquired its rights, is a member of the Society. Id.

[6] 332 F. Supp. at 1207.