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I. Herman Stern

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THE BACKGROUND AND PUBLIC POLICY OF PENNSYLVANIA LAW ON COLLECTIVE BARGAINING AGREEMENTS—UNSHACKLING THE HOLD OF THE COMMON LAW.

I. HERMAN STERN †

PENNSYLVANIA is recognized as one of the leading common law jurisdictions in the United States. Colonial Pennsylvania accepted the early English law in full measure—both its statutory as well as its common law.¹ This meant the acceptance, of course, of the common law principle of *stare decisis*. The common law's major contribution to our system of jurisprudence has been stability, certainty and predictability; and in this respect, the principle of *stare decisis*—the giving of credence and effect to precedent—has played a prime role. This is essentially as it should be, since the predictable element in the law is truly one of the fundamental attributes of any workable system of jurisprudence.

The common law of Pennsylvania, in the eighteenth and nineteenth centuries, on collective labor action and the collective labor agreement was restrictive in nature and hostile in mood. It effectively strangled the growth of labor unions by applying to collective bargaining the doctrines of conspiracy and restraint of trade. Since 1931, and more particularly since 1937, Pennsylvania law on this score is no longer governed by the dead weight of these two common law principles. This

† Associate Professor of Law, Temple University School of Law. B.S. 1936, Wharton School, University of Pennsylvania; M.A. 1942, University of Pennsylvania; LL.B 1948, Temple University. Treasurer, Section on Labor and Industry, Pennsylvania Bar Association; Member, Pennsylvania and Philadelphia Bars.

1. PA. STAT. ANN. tit. 46, § 152 (1952). It is interesting to note that the judges of the Supreme Court of Pennsylvania in 1808 examined and reported to the Legislature which of the English Statutes were in force in the state and which of such statutes in their opinion should be incorporated into the statutory laws. The judges modestly reported that “. . . the legislature will easily perceive the difficulties attending the report now presented to them. . . .” 3 Bin. 595-626 (Pa. 1808).

change has been effected by statutorily declared public policy and substantive legislative enactments.

The spirit as well as the letter of Pennsylvania law has changed. The Anti-Injunction Act of 1931² and thereafter the 1937 Labor Relations Act³ and the Labor Anti-Injunction Act⁴ have been responsible in large part for this change. These acts have extirpated the antagonistic policy of Pennsylvania law established by the *stare decisis* resulting from adjudications and judgments in cases decided prior to 1931. Since 1937, Pennsylvania public policy encourages collective bargaining and collective labor agreements. Rules of law gleaned from cases decided prior to 1937 therefore cannot be cited as *stare decisis* and controlling as precedent without giving full effect to the emancipating impact of the public policy and substantive provisions of the Labor Relations and the Anti-Injunction Acts enacted in the 1930's.

It will be seen that this broad, friendly approach toward collective bargaining agreements now permeates not only the Labor and Anti-Injunction laws, but the entire gamut of the Pennsylvania statutory and common Law on labor. This paper will first present a summary analysis of the early English and pre-1931 Pennsylvania law on collective bargaining and the collective agreement. It will thereafter analyze the effect of Pennsylvania's public policy in this field as announced by legislation. The historical background in any specialized field of law is usually developed to establish ruling case law and controlling precedent. This paper, on the other hand, will explore the legal background to show that restrictive, early English and Pennsylvania law no longer controls. The principle of *stare decisis* in this field of law can only be applied after according full credence and application to the Pennsylvania affirmative about-face with respect to this subject matter.

I.

BACKGROUND OF ENGLISH AND PENNSYLVANIA LAW ON LABOR AGREEMENTS.

Historically, the approach of the English law to collective bargaining was hostile and negative. This approach spilled over into the law of the American colonies, where it was received with approbation. Pennsylvania was no exception.

2. Act of June 23, 1931, P.L. 926, provided in part that no court shall have jurisdiction to issue an injunction in a case involving a labor dispute. "Labor dispute" is defined in Section 1(c) of that act to include "any controversy concerning terms of employment or . . . the representation of persons in negotiating, fixing, maintaining, changing or seeking to change the terms or conditions of employment relations, or arising . . . out of the respective, interests of employer and employee."

3. PA. STAT. ANN. tit. 43, §§ 211.1-211.13 (1952).

4. PA. STAT. ANN. tit. 43, §§ 206a-206r (1952).

The roots of the law of labor contracts dig deeply into an inimical and barren soil of English background. The basic mood of early English law is one of repression, start at whatever point one will. In this respect, it is indeed difficult to select precisely the right point of beginning. The bygone centuries each provide their cases and their statutes by the legion which suppress or else stifle concerted labor activities. Suffice it to note that as far back as the year 1351, the Statute of Laborers⁵ imposed, inter alia, criminal sanctions for the violation of a labor contract. On the other hand, all other commercial and business non-labor contractual violations during the 14th century were redressable only by civil damages. Thus, beginning with more than six centuries ago and continuing thereon until recent years, the labor contract under English law was relegated to the status of second class citizenship in the realm of contract law.

As the centuries passed, mercantilism supplanted the feudal system; and then the rise of the factory and industrial system in turn spelled the nemesis of mercantilism. The star of the individual entrepreneur was in its ascendancy. The new economic system depended on capital, laissez faire, free enterprise, and the delicate interplay of unhampered supply and demand. Collective labor action and the resultant labor contract would, it was thought, result in economic disequilibrium and imbalance. It would throw the law of supply and demand out of kilter. A fortiori, it was a logical and simple step to declare concerted economic endeavor by workers to improve their lot a conspiracy—a corrupt agreement for an unlawful purpose. Criminal sanction would then follow in order to vindicate the public wrong, and civil damages or the voidance of the contract to compensate for the private legal hurt. This, then, was the touchstone of redressing the damage to society and to the individual. Under the criminal law, the concerted activities directed toward achieving a labor contract was held to involve criminal conspiracy.⁶ Under the private or civil law the labor agreement was against

5. 23 EDW. 3, st. 1 (1351). This act reenacted the previously adopted Ordinance of Laborers, 23 EDW. 3 (1349). Three other subsequent English major labor statutes, just to mention a few, which imposed strict and unsympathetic rules during the succeeding centuries, were the Statute of Laborers, 5 ELIZ., c. 4 (1562); and the Combination Acts of 1799, 39 GEO. 3, c. 81, and of 1800, 40 GEO. 3, c. 106. Several leading English cases which stress this same shackling influence on concerted labor activities are: *The Tubwomen v. The Brewers of London* (Rex v. Starling), 1 Keb. 655-675-682, 83 Eng. Rep. 1167-1179-1184 (1665); *Rex v. Journeymen Taylors of Cambridge*, 8 Mod. 10, 88 Eng. Rep. 9 (1721); *Rex v. Eccles*, 1 Leach Cl. Cas. 274, 168 Eng. Rep. 240 (1783).

An outstanding and scholarly, short, historical review of the English background to labor law, which in part also reviews the above cited items, will be found in LANDIS & MANOFF, *LABOR LAW* (2 ed. 1942).

6. Common law criminal conspiracy is defined as two or more persons combining, either: "1. To accomplish a criminal or unlawful purpose; 2. or to accomplish a purpose not in itself criminal or unlawful by criminal or unlawful means. It is the

public policy and therefore unenforceable and void as a restraint of trade.⁷

During the Colonial period and thereafter until 1869, Pennsylvania in like manner espoused the doctrines of criminal conspiracy and restraint of trade. Its courts held that concerted measures by workers for their mutual economic benefit constituted unlawful activity. The celebrated *Philadelphia Cordwainers'* case⁸ decided in 1806 is a case in point. The court found the defendant-workmen guilty of a criminal conspiracy because they "did combine, conspire and confederate, and unlawfully agree together . . . that they . . . would not . . . work . . . but at a certain large price and rates. . . ."

The defendants were each fined. They could just as well have been sentenced to a prison term. Recorder Levy, speaking for the court, recognized that it was perfectly proper for each of the workmen to request an individual wage increase, but as for the concerted activities, he held:

" . . . a combination of workmen to raise their wages may be considered from a two-fold point of view; one is the benefit themselves, the other to injure those who do not join their society. The rule of law condemns both. [T]he rule in this case is pregnant with sound sense and all the authorities are clear upon the subject. . . ."

In 1869, the Pennsylvania legislature declared it a legal right to form and join labor unions.⁹ Criminal liability for conspiracy was thereafter abolished as a result of the respective enactment of three statutes within approximately the next two decades.¹⁰ But civil liability for conspiracy nonetheless continued as of old.¹¹ Pennsylvania also continued to recognize and enforce the so-called "yellow-dog" or "iron clad" contracts.¹² By entering such a contract an employee, during his entire term of employment, solemnly undertook not to join or remain a member of a labor union. The employee further thereby expressly agreed that he would sever his employment relation if he joined or remained in a labor organization.

unlawful combination or agreement that constitutes the offense, and no further overt act is necessary." CLARK & MARSHALL, CRIMES §126 (5th ed. 1952). See also Sayre, *Criminal Conspiracy*, 35 HARV. L. REV. 393 (1921).

7. *Cf. People v. Fisher*, 14 Wend. 9 (N.Y. 1835).

8. *Commonwealth v. Pullis*, Phila. Mayor's Ct. (1806); 3 COMMONS & GILMORE, DOCUMENTARY HISTORY OF AMERICAN INDUSTRIAL SOCIETY 60-248 (1910).

9. Act of May 8, 1869, P.L. 1260.

10. Act of June 14, 1872, P.L. 1175; Act of April 20, 1876, P.L. 45; Act of June 16, 1891, P.L. 300.

11. *Purvis v. Local 500, United Bro. of Carpenters and Joiners*, 214 Pa. 348, 63 Atl. 585 (1906); *Erdman v. Mitchell*, 207 Pa. 79, 56 Atl. 327 (1903).

12. *Flaccus v. Smith*, 199 Pa. 128, 48 Atl. 894 (1901).

The year 1931 in some respects,¹³ and more so the year 1937, marked a profound change in the spirit and the letter of Pennsylvania law of collective bargaining and labor contracts. Two general remedial statutes¹⁴ dealing with broad areas of union-employer relationships and problems, enacted in June, 1937, declared a positive public policy of encouraging collective bargaining and labor agreements in industrial and commercial enterprises. Another statute promulgated the same sympathetic policy in public utilities.¹⁵ A few days earlier in May 1937, prior to the enactment of these two remedial statutes, the Pennsylvania Legislature reversed the venerable common law canon then in effect which required strict construction of statutes in derogation of the common law.¹⁶ Here again was a change in the law of Pennsylvania which has a liberalizing impact on the present law on labor contracts. Prior to this rule of liberal construction of statutes in derogation of the common law, Pennsylvania applied the rule of strict construction,¹⁷ or at least so interpreted that it would accord, as nearly as may be, with the theretofore existing course of the common law.¹⁸

This paper will analyze the public policy and statutes of the labor agreement in detail. It is important to recognize the principle that the case law decided prior to 1937 is not controlling as *stare decisis*, and to take into full account the impact of the 1937 labor acts dealing with mediation, labor relations and labor injunctions.

II.

THE PENNSYLVANIA PUBLIC POLICY AND ITS IMPACT ON THE LABOR CONTRACT.

The two major Pennsylvania statutes of general application are the Labor Relations Act and the Labor Anti-Injunction Act. A public policy section will be found in each of these two statutes. These legislative policy statements declare in sweeping and felicitous terms that the public policy of Pennsylvania is that of encouraging collective bargaining and the negotiation of collective bargaining agreements. A detailed analysis of this public policy is apropos.

13. See note 2 *supra*.

14. See notes 3 and 4 *supra*. In addition, the Labor Mediation Act of 1937, PA. STAT. ANN. tit. 43, §§ 211.31-211.39 (1952), declares in Section 2 thereof that "it is the public policy . . . to encourage . . . employees by their representatives to make and maintain agreements concerning wages, hours, and conditions of employment, and to settle all controversies arising out of the application of such agreements."

15. PA. STAT. ANN. tit. 43, §§ 213.1-213.16 (1952).

16. PA. STAT. ANN. tit. 46, § 558 (1952).

17. *Smith v. Altoona and Phillipsburg R. R. Co.*, 182 Pa. 139, 37 Atl. 930 (1897); *Keim v. City of Reading*, 32 Pa. Super. 613 (1907).

18. *Bridgeford v. Groh*, 306 Pa. 566, 160 Atl. 451 (1932); *Merrick v. Dupont*, 285 Pa. 368, 132 Atl. 181 (1926).

A. The Pennsylvania Labor Relations Act.

The Pennsylvania Labor Relations Act (hereinafter "Labor Act") was enacted on June 1, 1937.¹⁹ Section 2²⁰ declares the legislative findings and public policy of the Labor Act. The Legislature finds, *inter alia*, in Section 2(a) that "individual employes do not possess . . . actual liberty of contract," a situation which "substantially and adversely affects the general welfare of the State. . . ." In Section 2(b) the Labor Act declares that "protection by law of the right of employes to organize and bargain collectively" removes sources and encourages resolution of industrial strife, thereby restoring equality of bargaining power. Section 2(c) promulgates the following public policy in express and unequivocal terms, namely:

"(c) In the interpretation and application of this act *and otherwise*, it is hereby declared to be the public policy of the State to encourage the practice and procedure of collective bargaining and to protect the exercise of workers of full freedom of association . . . for the purpose of negotiating the terms and conditions of their employment. . . ." (Emphasis added.)

The words "and otherwise" are pregnant with meaning and significance with regard to their impact on the law of labor contract. The Legislature, in choosing these words has mandated that the stated public policy of encouraging collective bargaining and its ultimate goal of the collective bargaining agreement must be integrated into the entire body of Pennsylvania law, no matter whether that law be the creature of the Legislature or the *lex non scripti* of Pennsylvania. The term "collective bargaining," too, should be construed in light of its traditional context, its traditional goals, and its traditional and accepted meaning. In this respect, collective bargaining is primarily a means to an end. The aim of collective bargaining is that of negotiating and enforcing a collective labor agreement which establishes standards of representation, wages, hours and conditions of employment. This, then, is the real meaning and significance of the public policy of Pennsylvania, declared in the Labor Act and to be applied to the interpretation and application of that statute "and otherwise."

Decisional Pennsylvania law as pronounced by its appellate courts recognizes the telling impact and consequences of this legislatively declared public policy. Thus, Pennsylvania courts have held that the object to be attained by a statute is the "authentic password" of a law.²¹

19. PA. STAT. ANN. tit. 43, §§ 211.1-211.13 (1952).

20. *Id.* § 211.2.

21. *Commonwealth v. Calio*, 155 Pa. Super. 355, 38 A.2d 351 (1944), which in turn cites the Statutory Construction Act of May 28, 1937, PA. STAT. ANN. tit. 46, § 558 (1952).

In construing a statute, the courts will look to its background, reasons for its enactment, the mischief which is to be remedied, and its object.²² Furthermore, the courts agree that the general design and the manifest purpose of a statute will be the paramount objective of judicial construction and statutory interpretation,²³ so that a statute will be construed to secure such an object and exclude every other.²⁴

Failure to give full effect to the public policy of the Labor Act and the words "and otherwise" would also run counter to the rules of statutory construction enacted in the Pennsylvania Statutory Construction Act of May 28, 1937.²⁵ The date of May 28, 1937 is important in that, among other things, except for statutes which are in their nature penal, retroactive, tax, eminent domain, or jurisdictional limitations upon courts, the act declares:

"The rule that laws in derogation of the common law are to be strictly construed, shall have no application to the laws of this Commonwealth *hereafter enacted.*"²⁶ (Emphasis added.)

The Labor Act was enacted on June 1, 1937, and the Labor Anti-Injunction Act was enacted on June 2, 1937. The Statutory Construction Act enacted less than a week prior to June 2, 1937, has codified the rules of statutory construction. The provisions²⁷ of this codification of the rules seem to give added effect to the words "or otherwise" in Section 2(c) of the Labor Act, for the reasons which follow:

22. *Commonwealth v. Emerick*, 373 Pa. 388, 96 A.2d 846 (1948); *Rose Township v. Hollobaigh*, 179 Pa. Super. 248, 116 A.2d 323 (1955); *Commonwealth v. Meinhart*, 173 Pa. Super. 495, 98 A.2d 392 (1953). It is interesting to note that this canon of statutory construction has its best known early exposition in *Heydon's Case*, 76 Eng. Rep. 637 (1584), wherein it was stated that ". . . four things are to be discerned and considered:—1st. What was the common law before the making of the Act. 2nd. What was the mischief and defect for which the common law did not provide. 3rd. What remedy The Parliament hath resolved and appointed to cure the disease of the Commonwealth. And 4th. The true reason of the remedy. . . ."

23. *Swartley v. Harris*, 351 Pa. 116, 40 A.2d 409 (1944).

24. *Kane v. Policemen's Relief and Pension Fund*, 336 Pa. 540, 9 A.2d 739 (1939).

25. PA. STAT. ANN. tit. 46, §§ 501-602 (1952).

26. *Id.* § 558. The word "enactment" is dealt with in Section 502 in defining "final enactment" as follows: "'Final enactment' or 'enacted finally' means the time when the procedure required by the Constitution for the enactment of a bill into law has been complied with." A bill becomes law after it has been passed by the General Assembly and signed by the presiding officers of each House in the presence of that House, and thereafter approved and signed by the Governor, or else approved by two-thirds of all the members elected to each House after veto by the Governor if the Assembly is in session. If a bill is not returned by the Governor within ten days after it has been presented to him it will become law if the Assembly is in session. If the General Assembly has adjourned, unless the Governor vetoes it within thirty days after adjournment, the bill becomes law. PA. CONST. art. III, §§ 1, 4, 8 and 9; and art. IV, § 15.

27. PA. STAT. ANN. tit. 46, § 551 (1952).

(1) The Statutory Construction Act, in Section 51 thereof, provides that the object of all interpretation is to effectuate legislative intention.

(2) Section 51 further provides that wherever possible, every law shall be construed to give effect to all its provisions. This provision has been held to mean that every word must be given full effect unless no other construction is possible.²⁸ This provision means, too, that the courts may not delete or disregard words contained in a statute.²⁹

(3) The Statutory Construction Act, in Section 52(5) thereof, further declares a presumption in ascertaining legislative intent is "that the Legislature intends to favor the public interest as against any private interest." It can be logically maintained that statutorily declared policy coincides with the public interest insofar as judicial construction is concerned. At this point, it is well to also note that Section 2(d) of the Labor Act states that "all the provisions of this act shall be liberally construed for the accomplishment of this purpose."³⁰ The stated purpose, of course, is encouragement of collective bargaining and the collective agreement.

(4) The Labor Act was enacted four days after the Statutory Construction Act of May 28, 1937. Therefore, even though the provisions of the Labor Act may be in derogation of the common law, this statute must be liberally construed pursuant to the command of Section 58 of the Statutory Construction Act.³¹

Several other sections of the Labor Act are also material in analyzing the scope and effect of the Pennsylvania statutory scheme of encouraging collective bargaining and the collective bargaining agreement. The terms "labor organization" and "labor dispute" are sweepingly defined in the Labor Act.³² Section 5, in the same favorable and all-embracing mood, defines the rights of employees as follows: "Em-

28. *Sterling v. Philadelphia*, 378 Pa. 538, 106 A.2d 793 (1954); *American Brake Shoe Co. v. District Lodge 9*, 373 Pa. 164, 94 A.2d 884 (1953).

29. *Allentown v. Pennsylvania Public Utility Comm.*, 173 Pa. Super. 219, 96 A.2d 157 (1953); *Commonwealth v. One 1939 Cadillac Sedan*, 158 Pa. Super. 392, 45 A.2d 406 (1946).

30. PA. STAT. ANN. tit. 43, § 211.2(d) (1952).

31. PA. STAT. ANN. tit. 46, § 558 (1952).

32. "Labor organization" is defined in PA. STAT. ANN. tit. 43, § 211.3(f), and "labor dispute" is defined in Section 211.3(h). The Labor Act defines labor organization to mean ". . . any organization . . . , and which exists for the purpose in whole or in part, of dealing with employers concerning . . . wages, rates of pay, hours of employment or conditions of work. . . ." The term "labor dispute" is defined in the act to include ". . . any controversy concerning (1) terms, tenure or conditions of employment, or concerning (2) the association or representation of persons in negotiation, fixing, maintaining, changing . . . terms or conditions of employment. . . ."

ployes shall have the right to self-organization, . . . to bargain collectively . . . and to engage in concerted activities for the purpose of collective bargaining.”³³

Continuing on this same theme, Section 6(1)(e)³⁴ makes it an unfair labor practice for an employer “. . . to refuse to bargain collectively with the representatives of his employes,” Section 7(a)³⁵ of the Labor Act is also material. It provides that collective bargaining representatives in an appropriate unit shall be

“ . . . the exclusive representatives of all the employes in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment or other conditions of employment. . . . ”

The Labor Act recognizes and applies the equitable doctrine of “clean hands.” The act declares that any party filing charges of unfair labor practices shall forfeit his rights if he has, in turn, also engaged in the same unfair labor practices.³⁶

The Pennsylvania Supreme Court has recognized that a prime purpose of the Labor Act is to provide a method of encouraging the collective labor agreement.³⁷ Individual contracts which conflict with this policy must fail. Members of a union are bound by the collective agreement which may govern all aspects of labor-management relations. These broad aspects of coverage are comprehended in section 7(a) of the Labor Act, namely: rates of pay, wages, hours of employment, or other conditions of employment.³⁸ The statute further directs that the collective bargaining for a labor contract must be sincere and participated in with a full measure of good faith.³⁹ Pennsylvania public policy favoring collective bargaining is so positive in nature, that even a strike in violation of the collective agreement does not necessarily terminate the employer’s duty to bargain with the striking union.⁴⁰

33. PA. STAT. ANN. tit. 43, § 211.5 (1952).

34. *Id.* § 211.6(1)(e). Union unfair labor practices which involve, among other items, either intimidation, force, or seizure of property for the purpose of negotiating collective agreements are included within the subsections of Section 211.6(2).

35. PA. STAT. ANN. tit. 43, § 211.7(a) (1952).

36. *Id.* § 211.10.

37. Shafer’s Petition, 347 Pa. 130, 31 A.2d 537 (1943).

38. PA. STAT. ANN. tit. 43, § 211.7(a) (1952). Prentice Unempl. Comp. Case, 161 Pa. Super. 630, 56 A.2d 295. See also Kinter v. Unempl. Comp. Bd., 180 Pa. Super. 529, 119 A.2d 639 (1956); Pusa Unempl. Comp. Case, 178 Pa. Super. 348, 115 A.2d 791 (1955); O’Donnell Unempl. Comp. Case, 173 Pa. Super. 263, 98 A.2d 406 (1953); Barclay White Co. v. Unempl. Comp. Bd., 159 Pa. Super. 94, 46 A.2d 598 (1946).

39. Hogan Unempl. Comp. Case, 169 Pa. Super. 554, 83 A.2d 386 (1951).

40. Lancaster Yellow Cab Co. v. Pennsylvania Labor Relations Bd., 371 Pa. 49, 88 A.2d 886 (1952).

B. The Pennsylvania Labor Anti-Injunction Act.

The Pennsylvania Labor Anti-Injunction Act (hereinafter "Anti-Injunction Act") was first enacted on June 2, 1937.⁴¹ This statute either deprives or else restricts the jurisdiction of the Pennsylvania Courts to afford judicial relief in certain areas involving labor relations and labor contracts. Section 2⁴² of the act declares legislative findings and a public policy which go hand-in-hand with the findings and policy of the Labor Act. In Section 2 (a)⁴³ of the Anti-Injunction Act, in like manner as in the Labor Act, the Legislature declares among other things that:

" . . . the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore . . . though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of . . . self-organization . . . to negotiate the terms and conditions of employment, and that he shall be free from interference . . . of employers . . . in . . . self-organization . . . for the purpose of collective bargaining. . . ."

Section 2 (b)⁴⁴ of the Anti-Injunction Act decries equity proceedings which permit ex-parte injunction relief in labor disputes. The act provides that such equity proceedings should be preceded by notice to and hearing of the parties, including the right of confrontation and cross-examination.

In defining the terms of the act, the definition of "labor dispute" therein is all-important. Section 3 (c)⁴⁵ of the act defines "labor dispute" in broad, encompassing terms, so as to include inter alia: ". . . negotiating, fixing, maintaining, changing . . . terms, of employment or concerning employment or any other controversy arising out of the respective interests of employer and employee," The so-called "yellow dog" contract is declared by Section 5⁴⁶ to be contrary to the public policy of the act and unenforceable either at law or in equity.

Section 6⁴⁷ of the Anti-Injunction Act provides that the traditional power of the Pennsylvania courts of equity will be completely denied in

41. PA. STAT. ANN. tit. 43, §§ 206a-206r (1952).

42. *Id.* § 206b.

43. *Id.* § 206b(a).

44. *Id.* § 206b(b).

45. *Id.* § 206c(c).

46. *Id.* § 206e.

47. *Id.* § 206f. The equity courts of Pennsylvania have jurisdiction solely by virtue of statutory authorization. Most of the labor unions in Pennsylvania are

any case involving or growing out of a labor dispute, notwithstanding any promise or contract to the contrary, in a number of enumerated matters, including: "(f) organizing themselves, forming, joining or assisting in labor organizations bargaining collectively with an employer . . . or for the purpose of collective bargaining. . . ."

Section 6 (n)⁴⁸ further expressly excepts from the operation of the canon of interpretation known as "*expressio unius est exclusio alterius*," the enumerated unenjoinable acts in Section 6. This subsection (n) expressly provides that the specific enumeration of unenjoinable acts shall not be interpreted to authorize injunctive relief where any act was otherwise unenjoinable prior to the enactment of the Anti-Injunction Act.

Section 7⁴⁹ of the act forbids the granting of injunctive relief in a labor dispute on the grounds that participating parties are engaged in a conspiracy or in unlawful combination. Appeals to the Pennsylvania Supreme Court are expedited by the Anti-Injunction Act. The statute provides in Section 15⁵⁰ thereof, that such appeals shall take "precedence over all matters, except older matters of the same character."

The Amendatory Act of 1939⁵¹ amended the Labor Anti-Injunction Act in two important respects insofar as the subject of this article is concerned. The Amendatory Act added to Section 4 of the 1937 statute a subsection which provided, inter alia, that:

" . . . this act shall not apply in any case—

"(a) Involving a labor dispute, as defined herein, which is in disregard, breach, or violation of, or which tends to procure the disregard, breach, or violation of, a valid subsisting labor agreement . . . Provided, however that the complaining person has not, during the term of the said agreement, committed an act as defined in both of the aforesaid acts (the Pennsylvania and the National Labor Relations Acts) as an unfair labor practice or violated any of the terms of the said agreement."

"

"(c) Where any person, . . . (or) labor organization engages in a course of conduct intended . . . to coerce an employer to commit a violation of the Pennsylvania Labor Relations Act of 1937 or the National Labor Relations Act of 1935."

unincorporated voluntary associations. Jurisdiction over such associations was originally conferred on the Courts of Common Pleas of Pennsylvania by the Act of June 16, 1836, P.L. 784.

48. *Id.* § 206f(n).

49. *Id.* § 206g.

50. *Id.* § 206o.

51. P.A. STAT. ANN. tit. 43, § 206d(a-d) (1952).

Insofar as the application of the above amendments contained in the 1939 Amendatory Act, the Supreme Court of Pennsylvania has held that these amendments declare both procedural as well as substantive changes. Thus, the Court has held that the procedural prerequisites of hearing, confrontation, cross-examination and like matters do not apply to those items which fall within the terms of the 1939 amendments.⁵²

The framework, public policy, substance and spirit of the Anti-Injunction Act just as in the Labor Relations Act, is at odds with the restrictive common law doctrines of conspiracy and restraint of trade insofar as collective labor action is involved. Although the cited 1939 Amendatory Act has somewhat expanded the area in which equity courts may grant injunctive relief in labor litigation, the courts on the whole have been deprived of their traditional jurisdiction to grant relief. The public policy declaration has not been amended. Insofar as the status and enforceability of the collective bargaining agreement, Section 4(a)⁵³ of the act as amended has accorded the "valid subsisting labor agreement" more, rather than less, standing and respectability than it had prior to the 1939 amendments. This is so for two reasons. In the first place, the Amendatory Act declares that equitable relief is available to enforce a valid subsisting labor agreement absent violation on the part of the complainant of terms of that agreement or of the practices enumerated as unfair labor practices in Section 6 of the Labor Act. Then, too, the Amendatory Act specifically relates the stated goals of the Labor Act with those of the Anti-Injunction Act.

Labor injunctions were until the recent past traditionally popular because of their speed and finality, as an effective weapon against concerted labor activity. The Anti-Injunction Act has helped to unshackle the labor contract and collective action from the unsympathetic grip of pre-1931 Pennsylvania law—primarily common law—by: (a) prohibiting injunctive relief against any particular item enumerated in Section 5, 6 and 7 of the act; (b) by expressly negating the common law rules of conspiracy, restraint of trade, and enforceability of the yellow-dog contract as these items apply to labor relations; and (c) by declaring a sympathetic and broad policy which encourages and nurtures collective labor action and the prime end of such collective action—the collective bargaining agreement. In Pennsylvania today, the labor injunction may be granted only in strict conformity with the provisions

52. *Carnegie Illinois Steel Corp. v. United States Steelworkers of America*, 353 Pa. 420, 45 A.2d 857 (1946).

53. PA. STAT. ANN. tit. 43, § 206d(a) (1952).

of the Anti-Injunction Act and pursuant to the stated public policy of that act.⁵⁴

III.

CONCLUSION.

All Pennsylvania law relating to collective bargaining agreements must today be decided and construed in a manner which is consistent with the public policy of the State to encourage collective bargaining and its end goal, the labor agreement.

The pre-1931 Pennsylvania rules of law on collective action and collective agreements, established partly by statute but primarily by the common law, were harsh and repressive. They shackled collective action. They presented practical and sometimes insurmountable obstacles to the negotiation, consummation, and enforcement of the labor agreement. The strong arm of equity, in ex-parte proceedings based on cold, calculated offtime equivocation of affidavit alone, all too often enjoined concerted labor activities. It was a poor lawyer, indeed, who could not draft an acceptable affidavit. Some of the grounds on which equitable relief was premised in the past included: breach of yellow-dog contracts⁵⁵, "black looks;"⁵⁶ and "moral coercion."⁵⁷ Theoretically, one might indeed argue that the common law was in fact liberal; that it was actually flexible; that it was true to the times; and that the judges were not as conservative as the leading cases would have one think. And it might also be shown that here and there one could find an adjudication or a judgment which shone like a beacon in the encouragement of what we today recognize as desirable concerted action.⁵⁸ But these instances seem to be merely "sports," exceptions to the general rule. The short answer to this theoretical argument on behalf of the liberality and flexibility of the common law on concerted activities by labor is: "that is the trouble. It is theoretical insofar as Pennsylvania law is concerned. In the vernacular, 'it just ain't so'." As the writer sees it, there is no arguing the encouragement or even the countenancing of collective bargaining when the entire gamut of collective action is subject to a strict and unsympathetic application of the common law doctrines of conspiracy and restraint of trade.

54. *Ibid.*

55. *Flaccus v. Smith*, 199 Pa. 128, 48 Atl. 894 (1901).

56. *O'Neill v. Behanna*, 182 Pa. 236, 37 Atl. 843 (1897).

57. *Edman v. Mitchell*, 207 Pa. 79, 56 Atl. 327 (1903). *Cf.* *Wick China Co. v. W. E. Brown*, 168 Pa. 449, 25 Atl. 492 (1894).

58. *Northern Railway Co. v. Brosseau*, 286 Fed. 414 (N.D. 1923).

The author of one of the most frequently cited and accepted texts on American rules of statutory construction, states with reference to the telling impact of public policy:

“Public policy retains a place of great importance in the process of statutory interpretation, and the tendency of courts has always been to favor an interpretation which is consistent with public policy. In fact it may be safely asserted that the basis of all interpretative rules in regard to strict and liberal interpretation are founded upon public policy in one form or another.”⁵⁹

On May 28, 1937, the Pennsylvania Statutory Construction Act was enacted. It declared, *inter alia*, that in general, statutes in derogation of the common law will no longer be strictly construed. Within one week after the enactment of the Statutory Construction Act, the Legislature enacted the two general labor statutes which have been the subject matter of this article—the Labor Relations Act and the Anti-Injunction Act. These remedial statutes unequivocally declared the public policy of Pennsylvania to be the encouragement of collective bargaining and the resultant collective agreement. The 1937 Labor Relations Act and Anti-Injunction Act thereby figuratively and actually sounded a legislative death knell to the common law doctrines of conspiracy and restraint of trade, at least to the harshness of approach and application where these doctrines concerned a labor dispute or the negotiation or effectuation of a labor contract. This legislative policy was further declared to apply beyond the terms of these two acts—it was applied to the Labor Relations Act “and otherwise.” The orthodox common law rules on contract, with all that it involves: offer, acceptance, consideration, assignment, breach, damages, discharge, and the like are included in those two words “and otherwise.” It is therefore necessary, in light of the public policy since 1937, to interpret, construe and apply contract law to the labor contract in a sympathetic and favorable manner wherever reasonably possible. Thus the labor contract stands separate and apart from other contracts or consensual agreements. The tables are reversed. The place of the collective bargaining contract is now unique in the scheme of Pennsylvania contract law.

59. 3 SUTHERLAND, STATUTES AND STATUTORY CONSTRUCTION 125, 126 (3d ed. 1943).