

LABOR AND THE SHERMAN ACT

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A P P E N D I X C

Brief Histories of the Cases in which a Labor Union, its Officers, or its Members have been Defendants under the Sherman Act.

Note. B. B. refers to Blue Book, i. e., the volume entitled, *The Federal Antitrust Laws with Amendments*, published on November 30, 1928, by the United States Department of Justice.

I. GOVERNMENT SUITS FOR INJUNCTIONS.

1. *United States v. Workingmen's Amalgamated Council of New Orleans et al.* In November, 1893, a dispute between the draymen and the warehousemen of New Orleans and their employees resulted in a strike, which soon spread to other workers who walked out in sympathy. As a result the business of the city was greatly handicapped, and the transit of goods through the city from state to state and to foreign countries "was totally interrupted." The attorneys for the United States sought an injunction against the unions on the ground that the strike was a conspiracy in restraint of interstate and foreign commerce and a violation of the Sherman Act. The petition was filed on March 25, 1893, in the Circuit Court for the Eastern District of Louisiana, and the injunction was granted. The court concluded that Congress had meant the act to apply to combinations of labor as well as of capital. 54 Fed. 994. The injunction decree was affirmed by the Circuit Court of Appeals for the Fifth Circuit, on June 13, 1893. *Workingmen's Amalgamated Council of New Orleans v. United States*, 57 Fed. 85 (B. B. 85).

2. *United States v. Debs et al.* In June, 1894, the American Railway Union asked its members not to work on railway trains to which Pullman cars were attached. The order was

issued to help members of the union who worked at the shops of the Pullman Company win their strike. In a few days the strike was so extensive as to tie up railway traffic throughout the central and western sections of the country. On July 2, 1894, attorneys representing the United States filed a petition for an injunction in the Circuit Court, Northern District of Illinois, restraining Eugene V. Debs, president of the union, and all others, from carrying on activity which obstructed the mails or interfered with interstate commerce. It was held that the strike was a conspiracy in restraint of trade in violation of the Sherman Act. A temporary injunction was granted on the same day, July 2. On July 17 government attorneys filed information with the court charging Debs and others with contempt for violating the injunction. Later in the month the court postponed the hearing of the contempt charges. (Appendix to *Report of the Attorney General*, 1896, pp. 87, 90-93.) Finally, on December 14, 1894, the court found Debs and his associates guilty of contempt and sentenced them to jail for terms varying from three to six months. *United States v. Debs et al.*, 64 Fed. 724. On January 14, 1895, the defendants appealed to the Supreme Court for writs of error and of habeas corpus. The first writ was at once denied. After hearings, the court, on May 27, 1895, denied the writ of habeas corpus. It upheld the injunction, but found other grounds for it than the Sherman Act. *In re Debs*, 158 U. S. 564. The original petition for the injunction was finally dismissed on July 28, 1899, at the instance of the government. (B. B. 88.)

3. *United States v. Debs et al.* In connection with the Pullman strike, United States attorneys, on July 3, 1894, asked for an injunction similar to the one described above, in the Circuit Court, District of Indiana. The order was directed at the American Railway Union and 49 individual defendants. It was issued on the same grounds as the Chicago injunction on July 3, and was continued in force until September 19, 1898, when the case was dismissed at the instance of the government. (B. B. 87.)

4. *United States v. Elliott et al.* Preliminary injunctions to restrain Elliott, Debs, and 293 other defendants were granted at the request of government attorneys on July 6 and October 24, 1894, in the Circuit Court, Eastern District of Missouri. The occasion and the grounds for the injunctions were the same as in the two injunctions above. On April 6, 1896, a final decree was entered and the injunction made permanent. 62 Fed. 801, 64 Fed. 27. (B. B. 87.)

(Note. U. S. v. Agler. Information was filed in the Circuit Court, District of Indiana, on July 12, 1894, charging Agler and others with contempt of court for violating one of the injunctions issued in the Pullman strike. Agler was adjudged guilty of contempt on the same day, July 12, 1894, the court asserting that the Act of 1890 was intended to prevent interference with railway transportation by labor. Sentence was suspended during good behavior. 62 Fed. 824. [B. B. 87.])

5. *United States v. International Brotherhood of Electrical Workers, Local Unions Nos. 9 and 134, et al.* This was a petition filed on February 24, 1913, in the District Court, Northern District of Illinois, seeking to enjoin electrical workers from interfering with the interstate business of the Postal Telegraph-Cable Company. A temporary injunction was granted at once and was made permanent by a final decree entered on February 27, 1914. (B. B. 125.)

6. *United States v. Bricklayers', Masons', and Plasterers' International Union of America et al.* This was a petition filed February 28, 1922, in the District Court, Southern District of New York, charging the international union, its officers, and the representatives of numerous local unions with combining and conspiring to restrain interstate trade and commerce in marble, cut stone, brick, and other commodities used in the construction of buildings. The unions were charged with agreeing with employers not to work on non-union materials, and with having adopted rules whereby the output of each worker was restricted. At the same time the petition was filed a consent decree was

entered against all the defendants except the representatives of three New York locals, against whom the case was still pending in November, 1928. The decree enjoined the restrictive rules and the refusal to work on non-union materials. (4 *Law and Labor* 95, April, 1922.) (B. B. 172.)

7. *United States v. Railway Employees' Department of the American Federation of Labor et al.* The railway shopmen all over the country went on strike during the summer of 1922 in protest against a decision cutting wages which was handed down by the United States Railroad Labor Board. On the ground, among others, that the strike, which hampered transportation, was a conspiracy in restraint of trade and thus a violation of the Sherman Act, the Attorney-General, on September 1, 1922, secured a temporary restraining order from the District Court for the Northern District of Illinois. The order restrained almost every act the effect of which would be to aid in continuing the strike. The first preliminary injunction was granted on September 25, and the second on October 5, 1922. 283 Fed. 479. The defendants filed motions to dissolve and dismiss the injunction on the next day. These motions were denied on January 5, 1923. 286 Fed. 228. After a final hearing the court, on July 12, 1923, rendered an opinion in favor of the government and made the injunction permanent. 290 Fed. 978. (B. B. 176.)

8. *United States v. National Association of Window Glass Manufacturers et al.* The manufacturers' association and the union in the handmade window glass industry had entered into an agreement under which one half of the total number of factories operated for one part of each year, after which the remaining factories operated during the other part. Charging that the agreement was a violation of the Sherman Law, the government asked for a restraining order in the District Court for the Northern District of Ohio. A temporary restraining order to prevent further performance of the agreement was granted on January 5, 1923. A trial on the application for a preliminary injunction took place in January, 1923, and on February 2, 1923,

a decision favorable to the government was handed down. 287 Fed. 219. A final decree was entered on April 19, 1923, whereupon the defendants appealed to the Supreme Court. That court rendered a decision reversing the lower court on December 10, 1923. It held that the agreement in question was not in unreasonable restraint of trade. *National Association of Window Glass Manufacturers v. United States*, 263 U. S. 403. (B. B. 180.)

9. *United States v. Journeyman Stone Cutters' Association of North America et al.* In a petition for an injunction filed by the government on February 28, 1927, in the District Court of the Southern District of New York, the national stone cutters' union, various local unions, and certain individuals, were charged with a conspiracy to restrain interstate commerce by hindering the sale and use of cast stone cut outside the Metropolitan District on buildings in the district. On September 27 the court sustained the government's contention. (*New York Times*, September 28, 1927.) (9 *Law and Labor* 263, October, 1927.) A final decree was entered on October 22, 1928. The defendants were enjoined from doing anything to prevent the transportation of the stone into the district, or to interfere with its sale or use. (10 *Law and Labor* 265, December, 1928.) The national union and its officers appealed to the Supreme Court, which considered the case on October 22, 1928. On November 19, 1928, it dismissed the appeal in a memorandum decision for lack of showing service of summons and severance on those defendants who did not appeal. *Journeyman Stone Cutters' Association v. United States*, 73 L. ed. 179. See case 38, this appendix.

10. *United States v. Painters' District No. 14 of Chicago, et al.* This is a petition filed August 22, 1928, in the District Court, Northern District of Illinois, against the council above named, numerous painters' and glaziers' unions, and their officers, all connected with the Brotherhood of Painters, Decorators and Paper Hangers of America. The government set forth a conspiracy in restraint of interstate trade and commerce in finished "built-in" kitchen cabinets, carried out by demanding that the

cabinets delivered in Chicago and vicinity have only a single coat of paint on them, and calling or threatening to call strikes to enforce the demand, causing buyers to cancel their orders; and fining one company for installing cabinets with more than one coat of paint. At the end of November, 1928, the petition was still pending on a motion to dismiss. (*Chicago Tribune*, April 19, 1928.) (B. B. 212.) See case 39, this appendix.

II. INDICTMENTS BROUGHT AT THE INSTANCE OF THE GOVERNMENT.

11. *United States v. Debs et al.* On July 10, 1894, United States attorneys secured indictments from the District Court in Chicago charging the officers of the American Railway Union with obstructing the mails and with a conspiracy in restraint of interstate commerce. On July 19 the Grand Jury returned more than twenty indictments versus Debs and others on the same charges. When the trial of the defendants on these charges began, early the next winter, the government attorneys had the case dismissed. In re Grand Jury, 62 Fed. 828; *United States v. Debs et al.*, 63 Fed. 436. (Cleveland, *The Government in the Chicago Strike of 1894*, p. 34.) (*Appendix to the Report of the Attorney General, 1896*, pp. 90-93.) (*Report of the Commission on Industrial Relations*, Vol. XI, 1916, p. 10771.)

12. *United States v. Cassidy et al.* This was an indictment returned in July, 1894, in the District Court, Northern District of California, charging the defendants with conspiracy to obstruct the mails and restrain interstate commerce in connection with the Pullman strike. The trial started at the beginning of April, 1895, and ended with a disagreement of the jury on April 6. On July 1, 1895, a nolle prosequi was entered. 67 Fed. 698. (B. B. 88.)

13. *United States v. E. J. Ray et al.* An indictment was returned February 14, 1908, in the Circuit Court, Eastern District of Louisiana, against 72 laborers, charging them with conspiracy in restraint of foreign trade and commerce. On the next

day another indictment was returned against the same defendants, who were this time charged with conspiracy in restraint of interstate trade or commerce. The two indictments were consolidated for trial on January 26, 1911. A verdict of guilty was returned as to three defendants, and fines aggregating \$110 were imposed. This judgment was later affirmed by the Circuit Court of Appeals. (B. B. 101, 102.)

14. *United States v. Joe Cotton et al.* An indictment was returned November 15, 1911, in the District Court of the Southern District of Mississippi, charging the defendants with conspiring to restrain interstate commerce during the course of a strike on the Illinois Central Railroad. Since the strike had terminated, no further action was taken, and the case was remanded to the files November 15, 1912. (B. B. 114.)

15. *United States v. A. Haines et al.* On December 16, 1911, four indictments were returned in the District Court of the Southern District of Florida against members of a longshoremen's union. Two of the indictments charged the defendants with conspiring to interfere with the interstate operations of the Mason Forwarding Company, which had declined to recognize one of the defendants who was the business agent. The other indictments charged that the regulations and requirements of the union with reference to the employment of workmen to load vessels with lumber interfered with interstate shipment. The indictments were consolidated for trial. The defendants entered pleas of guilty, and each was sentenced to four hours' confinement. (B. B. 115.)

16. *United States v. White et al.* On June 7, 1913, an indictment was returned in the District Court, Southern District of West Virginia, against 19 members of the United Mine Workers, charging a conspiracy to interfere with interstate commerce in coal mined in West Virginia. The case was noll prossed on June 20, 1914. (B. B. 128.)

17. *United States v. John P. White et al.* On December 1, 1913, an indictment was returned in the District Court, District of

Colorado, against officials and members of the United Mine Workers, charging them with monopolizing all coal diggers and mine laborers and with restraining interstate commerce in coal. The case was noll prossed on January 8, 1916. (B. B. 131.)

18. *United States v. Frank J. Hayes et al.* On December 1, 1913, an indictment was returned in the District Court, District of Colorado, against members of the miners' union, charging them with conspiring to interfere with the mining of coal in Colorado and with its transportation to and sale in other states. The case was noll prossed on January 8, 1916. (B. B. 131.)

19. *United States v. Norris et al.* The defendants were found guilty, on an indictment filed January 26, 1915, charging a conspiracy to violate the Sherman Act, of attempting to force an employer to pay them blackmail by calling strikes. Thus hauling of sand and the unloading of sand from railroad cars were prevented, and other cars were diverted to the wrong parties. The defendants moved to arrest judgment, and in a decision entered on December 16, 1918, the court denied the motion. The case was tried in the District Court, Northern District of Illinois, Eastern Division. 255 Fed. 423. (*Law and Labor*, June, 1919, p. 14.)

20. *United States v. Michael Artery et al.* Eight indictments were returned in January and April, 1915, in the District Court, Northern District of Illinois, against certain business agents of trade unions in Chicago. They were charged with combining to prevent the unloading in Chicago of goods shipped from other states. Demurrers to the indictments were overruled. The trial of three of the defendants under one of the indictments resulted in a verdict of guilty. On December 20, 1918, fines aggregating \$2,500 were imposed. On March 8, 1919, the defendants under the other indictments pleaded guilty and fines aggregating \$2,000 were imposed. A nolle prosequi was entered as to one indictment. (B. B. 136.)

21. *United States v. Michael Boyle et al.* Two indictments, one against Boyle et al., and one against Feeney et al., were re-

turned April 27, 1915, in the District Court, Northern District of Illinois, Eastern Division, charging a conspiracy in violation of the Sherman Act among labor unions and certain manufacturers in Chicago to prevent the installation of electrical appliances, such as switchboards and panels manufactured elsewhere, the purpose being to eliminate competition from that source. Demurrers to the indictments were overruled. In the course of the trial of the Boyle case it was made clear that the union had agreed not to install appliances unless they were union-made. The trial resulted in a verdict of guilty. Sentences of 60 days and one year in jail were imposed upon two defendants, and these and eleven others were fined an aggregate of \$15,500. The Seventh Circuit Court of Appeals affirmed the judgment on April 4, 1919. 259 Fed. 803. An application for a rehearing was denied. Boyle's sentence was commuted to four months. A nolle prosequi or dismissal was entered as to eight defendants. (B. B. 137.)

22. *United States v. Boyle et al. (The Feeney Indictment.)* The facts charged in this indictment were the same as those in the Boyle case. The trial of the Feeney case was postponed until the Boyle case was concluded. On October 31, 1923, motions to dismiss were denied and the case was set for trial on December 3, 1923. In November, 1923, three of the principal individual defendants and five of the principal corporate defendants entered pleas of guilty. They were fined amounts aggregating \$6,000. The case was dismissed as to the remaining defendants. (B. B. 137.)

23. *United States v. Andrews Lumber and Mill Company et al. United States v. Brims.* On January 21, 1921, an indictment was returned at Chicago charging 68 defendants, constituting substantially all of the manufacturers in Chicago of sash, doors, and interior finish, a number of building contractors, and members of the United Brotherhood of Carpenters and Joiners of America, with restraining interstate commerce in sash, doors, and interior finish in violation of the Sherman Act. The indict-

ments charged that the defendants were enabled to monopolize the trade in Chicago by agreeing that the manufacturers would not employ persons not members of the union and that members of the union would not install material made by manufacturers in other states. On March 12, 1921, all the defendants filed demurrers and motions to quash. Because it was thought that objection might be entered to the foregoing indictment on the question of the authority of the Grand Jury, United States attorneys thought it advisable to secure another indictment on similar grounds against the same defendants. This was done on September 2, 1921, in the District Court for the Northern District of Illinois, Eastern Division. Trial was begun June 12, 1923. The case was dismissed as to a number of defendants, and fines aggregating \$58,300 were imposed. A number of defendants paid their fines and the remainder appealed to the Circuit Court of Appeals, Seventh Circuit. On June 4, 1925, that court held that the trial had proved only that the union had agreed not to work on non-union millwork, whether made in or out of Illinois, and that the Sherman Act was not violated. It reversed the judgment of the lower court and remanded the cause for further proceedings. *Brims et al. v. United States*, 6 F (2) 98. The government appealed to the Supreme Court on a writ of certiorari. On November 23, 1926, that court reversed the judgment of the Circuit Court of Appeals and remanded the cause for further proceedings. *United States v. W. F. Brims et al.*, 71 L. ed. 403. On October 22, 1927, the Circuit Court of Appeals affirmed the judgment of conviction by the District Court. *Brims et al. v. United States*, 21 F (2) 889. (B. B. 160, 167.)

24. *United States v. Jones et al.* On February 25, 1921, an indictment was filed in the District Court at Indianapolis charging operators of bituminous mines and officials of the miners' union with conspiracy to restrain interstate trade and commerce. The indictment charged that the defendants had agreed to create shortages, to limit production and distribution, to establish a uniform accounting system, and to act in concert to increase

wages and the price of coal. The indictment was dismissed upon motion of the government on June 28, 1923. (B. B. 162.)

25. *United States v. Chicago Master Steam Fitters' Association et al.* On April 30, 1921, an indictment was returned in the District Court at Chicago against 19 corporations and 24 individual defendants, including the business manager of the union called the Chicago Steam Fitters' Protective Association. The defendants were charged with monopolizing and restraining interstate commerce in furnishing and installing heating apparatus in Chicago. Demurrers were overruled on October 17, 1921. After a thorough investigation the case was noll prossed on May 28, 1926. (B. B. 165.)

26. *United States v. Louis Biegler Company et al.* On April 30, 1921, an indictment was returned in the District Court at Chicago against 11 corporations and 18 individuals, including representatives of the Amalgamated Sheet Metal Workers' Union, charging monopolization and restraint of interstate trade in furnishing and installing heating apparatus in Chicago. Demurrers were overruled on October 17, 1921. After a thorough investigation the case was noll prossed on May 28, 1926. (B. B. 165.)

27. *United States v. James O'Brien et al.* In April, 1922, an indictment was returned against O'Brien and four others in the District Court of the Eastern District of Kentucky. The defendants, acting as pickets, had, by telling a truck driver that he could not proceed with his load, interfered with the delivery of a steel billet across the state boundary. They were charged with violating the Sherman Act and were tried and convicted at the same term of court. Four were sentenced to jail terms of eight months each and one to a term of 30 days. Four of them appealed to the Circuit Court of Appeals for the Sixth Circuit. The decision of the lower court was affirmed on June 5, 1923. *O'Brien v. United States*, 290 Fed. 185. The court denied a petition for a rehearing on July 18, 1923. (B. B. 175.)

28. *United States v. Johnston Brokerage Company et al.* On November 28, 1921, an indictment was returned in the District

Court, Southern District of New York, charging the defendants, among whom were 53 firms producing handmade window glass, and the president of the National Window Glass Workers, with a conspiracy to enhance prices and suppress competition in violation of the Sherman Act. The manufacturers were said to produce about two-thirds of all the handmade glass used in the United States. Complaint was made of an agreement whereby the period during which each plant might work was restricted. In February, 1922, a demurrer to the indictment was sustained on the ground that it had not been shown that the alleged conspiracy was formulated in the Southern District of New York. Nolle prosequi was filed as to all the defendants on August 29, 1927. (B. B. 170.) (Information partly secured from a Ph.D. thesis at the University of Wisconsin, written by Alfred W. Briggs and entitled "Labor in the Window Glass Industry.")

29. *United States v. Clements et al.* In August, 1922, during the railway shopmen's strike, the defendants induced certain employees of the Atchison, Topeka, and Santa Fé Railway Company to go on strike and to abandon the trains they were operating. Trains were abandoned, to the discomfort of passengers, at Needles, Calif., and at several desert villages. An indictment was returned on September 25, 1922, in the District Court for the Southern District of California, charging conspiracy to obstruct the United States mails and to interfere with interstate commerce in violation of the Sherman Act. A demurrer to this indictment was sustained, and a second indictment was returned on November 8, 1922. The eight defendants were tried and found guilty on December 20, 1922. Fines aggregating \$10,000 were imposed. The Circuit Court of Appeals for the Ninth Circuit affirmed the judgment of the lower court on March 17, 1924. It denied a rehearing on May 5, 1924. *Clements et al. v. United States*, 297 Fed. 206. Petition for a writ of certiorari was denied by the Supreme Court on October 13, 1924. (B. B. 177.)

30. *United States v. Williams, Hanley, et al.* On September

27, 1922, an indictment was returned in the District Court for the Western District of Texas, charging a conspiracy to violate the Sherman Act by interfering with interstate commerce during the shopmen's strike. The defendants were alleged to have put quicksilver in the boilers of locomotives on the Southern Pacific Railroad. The first trial resulted in a mistrial because of the illness of a juror. A second indictment was returned and on retrial five defendants were found guilty. On January 24, 1923, one defendant was acquitted. The case against three defendants was dismissed because of insufficient evidence. On February 3, 1923, the convicted defendants were each sentenced to 10 months' confinement and fined \$2,500. This judgment was affirmed by the Circuit Court of Appeals for the Fifth Circuit on December 1, 1923. *Williams et al. v. United States*, 295 Fed. 302. On June 9, 1924, the Supreme Court denied a petition for a writ of certiorari. (B. B. 177.)

31. *United States v. Ed. Powell*. On October 18, 1922, an indictment was returned against Powell charging him and other persons, unknown, with a conspiracy to restrain interstate commerce during the shopmen's strike by setting fire to certain carloads of coal. On October 19, 1922, he pleaded guilty and was sentenced to ten days in jail. The other conspirators were never identified. (B. B. 178.)

32. *United States v. American Window Glass Company et al.* On March 17, 1922, an indictment was returned in the District Court of the Southern District of New York, charging the union and the handmade window glass manufacturers' association with a conspiracy to violate the Sherman Act, carried out by means of price fixing agreements and by an agreement to operate each group of factories only half of each year. The court overruled a demurrer on June 29, 1922. The indictment had not yet gone to trial by November, 1922. The government counsel connected with the New York indictment started a Grand Jury investigation in the District Court of the Northern District of Ohio, Eastern Division. The counsel admitted their intention to use

testimony procured from the subpoenaed witnesses in the New York prosecution. These witnesses moved to quash and vacate the subpoenas directing them to appear before the Grand Jury. On November 9, 1922, the court granted the motion and restrained the Grand Jury investigation until such time as a trial had taken place in New York, or until the government should decide to try the expected Ohio indictment first. In *re National Window Glass Workers et al.*, 287 Fed. 219. In view of the Supreme Court's decision in the *National Association of Window Glass Manufacturers et al. v. United States*, 263 U. S. 403 (1923) (See case 8, this appendix), the government finally noll prossed the case on September 16, 1926. (Information partly secured from a Ph.D. thesis at the University of Wisconsin, written by Alfred W. Briggs and entitled "Labor in the Window Glass Industry.") (B. B. 173.)

33. *United States v. A. L. Harvel et al.* On December 13, 1922, an indictment was returned in the District Court for the Western District of Louisiana charging a conspiracy to restrain interstate commerce, in pursuance of which an assault was made upon a roadmaster of the Kansas City Southern Railroad about July 2. On December 17, 1923, the case against one defendant was noll prossed, and the two remaining defendants pleaded guilty and were each fined \$25. This indictment was a result of activities carried on in connection with the shopmen's strike of 1922. (B. B. 179.)

34. *United States v. Francis Reilly et al.* On January 5, 1923, two indictments were returned in the District Court, Western District of New York, against 14 defendants, charging a conspiracy in violation of the Sherman Act in connection with the dynamiting of the High-Speed Line of the International Railway on August 17, 1922. On January 7, 1923, a third indictment was returned against 22 defendants. To this indictment four defendants pleaded guilty on January 9, 1924. Sentences were suspended pending the trial of four defendants who pleaded not guilty. The trial resulted in a verdict of guilty on January 21,

1924. Each of those convicted was sentenced to one year in jail. Fines aggregating \$13,000 were also imposed. The judgment was confirmed by the Circuit Court of Appeals, Second Circuit, on March 2, 1925. *Vandell et al. v. United States*, 6 F (2) 188. *Nolle prosequi* was entered June 14, 1926, as to all but four of the remaining defendants, certain of whom were made parties to the indictment described in case 37 below. The cases against those not so made parties were noll prossed on November 23, 1926. (B. B. 180.)

35. *United States v. Tom Hency et al.* On January 16, 1923, an indictment was returned in the District Court for the Northern District of Texas, alleging a conspiracy to interfere with interstate commerce in violation of the Sherman Act by disabling locomotives through introducing quicksilver and other chemicals into their boilers. It was shown only that the defendants had these chemicals in their possession, not that they had actually used them. The court sustained a demurrer to the indictment on February 10, 1893, asserting that the Sherman Act was not intended to prevent sabotage. The case grew out of the shopmen's strike. 286 Fed. 165. (B. B. 181.)

36. *United States v. Dryllie et al.* On January 16, 1924, seven members of the railway shop craft unions pleaded guilty in a District Court in Ohio to a violation of the Sherman Act by committing sabotage during the shopmen's strike of 1922. Among the acts of which they were guilty were the following: placing a large nut so that it would fall into the cylinder of an engine when it started; placing quicksilver and emery dust in locomotive boilers; and placing lye in the shoes of a railway employee. (6 *Law and Labor* 69, March, 1924.)

37. *United States v. William B. Fitzgerald et al.* On May 20, 1925, an indictment was returned in the District Court, Western District of New York, against 25 officials and members of railway unions, including certain defendants indicted in case 34, described above. The indictment charged violation of the Sherman Act in connection with the dynamiting of the High-Speed

Line of the International Railway. The case went to trial as to ten defendants on January 14, 1926. The indictment was dismissed as to six defendants and on January 21 the jury returned a verdict of not guilty as to the other four. The case against the remaining defendants was noll prossed in June, 1926. (B. B. 181.)

38. *United States v. Michael W. Mitchell et al.* On July 7, 1926, an indictment was returned in the District Court, Southern District of New York, charging five officers of trade unions having to do with stone cutting with a conspiracy to prevent the use of cast stone within the Metropolitan District which had been manufactured outside that district. The government's demurrers to special pleas in bar were argued, and were sustained on July 5, 1927. No further advance in the case had occurred by the end of November, 1928. (B. B. 200.) See above, case 9.

39. *United States v. Arthur W. Wallace et al.* On April 18, 1928, an indictment was returned in the District Court, Northern District of Illinois, against 12 officers and business agents of the Painter's District Council No. 14 of Chicago, charging a conspiracy to restrain interstate trade and commerce in violation of the Sherman Act. The defendants were alleged to have carried out their conspiracy by demanding that "built-in" kitchen cabinets delivered in Chicago and vicinity have only a single coat of paint on them, by calling or threatening to call strikes to enforce this demand, thus causing buyers to cancel orders, and by fining one company for installing cabinets with more than one coat of paint. Demurrers were overruled on August 17, 1928. The case was awaiting trial at the end of November, 1928. (B. B. 209.) See above, case 10. (*Chicago Tribune*, April 19, 1928.)

40. *United States v. George H. Meyers et al.* On June 28, 1928, an indictment was returned in the District Court, Northern District of Illinois, against four officers and employees of the Glaziers' Local Union No. 27, and against Benjamin Beris, president of the American Glass Company. The defendants were charged with a conspiracy to restrain interstate commerce in

glazed bathroom cabinets and other glazed products, the principal means used to accomplish the restraint being strikes or threats to declare strikes. The case had not yet gone to trial in November, 1928. (B. B. 211.)

III. DAMAGE SUITS.

41. *Loewe et al. v. Lawlor et al.* In 1902, as a result of a dispute between the hat manufacturers of Danbury, Conn., and the hatters' union, the latter initiated a nation-wide secondary boycott against the products of the firms. On August 31, 1903, the manufacturers brought suit for damages against the officers and members of the union, charging a conspiracy in restraint of interstate trade and commerce in violation of the Sherman Act, as a consequence of which it had suffered financial losses of some \$80,000. The complaint was entered in the Circuit Court for the District of Connecticut. The defendants entered a demurrer to a plea of abatement and were sustained. 130 Fed. 63. They later entered a plea that the complaint against them was insufficient. The court held the complaint to be sufficient. *Loewe v. Lawlor*, 142 Fed. 216. December 13, 1905. The defendants thereafter filed a demurrer to the entire complaint of the manufacturers. The court rendered a decision on this demurrer on December 7, 1906. It asserted that none of the acts of the hatters, taken by themselves, could be considered interstate commerce, and that it was very uncertain what the Supreme Court would say if it were to consider the acts as a whole. In view of the great delay and expense involved if the suit should go to trial, and in view of the uncertainty of the Supreme Court's position, the court considered it best to dismiss the complaint of the manufacturers. *Loewe v. Lawlor*, 148 Fed. 924. The complainants thereupon appealed and secured a writ of certiorari, which was issued to the Circuit Court of Appeals for the Second Circuit. On February 3, 1908, the Supreme Court handed down a decision reversing the judgment of the lower court and remanding the cause with directions to proceed accordingly. The

Supreme Court held that the combination described in the manufacturers' complaint was a conspiracy in restraint of trade which violated the Sherman Act. *Loewe v. Lawlor*, 208 U. S. 274. The case thereupon went back to the Circuit Court, and the suit for damages was tried. The trial lasted from October 13, 1909, until February 4, 1910, when the case went to the jury, which assessed the damages at \$74,000. This amount was trebled by the court in accordance with Section 7 of the Sherman Act. The judgment in favor of Loewe, which included costs, amounted to \$232,240.12. The hatters thereupon appealed on a writ of error to the Circuit Court of Appeals, Second Circuit, and asked for a reversal of judgment. That court, on April 10, 1911, reversed the judgment of the court below. It asserted that the court had erred in practically directing the jury to return a verdict against the hatters, leaving only the amount of damages to the consideration of the jury. It held that the question as to whether the evidence showed that individual members of the union should be held liable for the acts of their agents was a question for the jury, not the judge. On May 8, 1911, the court denied a petition for a rehearing, reasserting the position above stated, and stating its expectation that the suit would proceed to a new trial. *Lawlor v. Loewe*, 187 Fed. 522. The second trial occurred in the lower court, now known as the District Court for the District of Connecticut, from August 26 to October 11, 1912. The jury rendered a verdict for the full amount demanded by the complainants. On November 15, 1912, judgment was entered for \$252,130. The hatters appealed from this judgment to the Circuit Court of Appeals, Second Circuit. The question before the court was whether the evidence proved the Sherman Act violated and whether it was sufficient to hold the individual members of the union responsible for the acts of their officers in carrying out the boycott. The court held the evidence sufficient and affirmed the judgment with costs. *Lawlor v. Loewe*, 209 Fed. 721. December 18, 1913. The defendants thereupon appealed on a writ of error to the Supreme Court. On January 5, 1915, that body

affirmed the judgment of the court below. *Lawlor v. Loewe*, 235 U. S. 522. The plaintiffs were not able to collect the damages awarded them until 1917. (Merritt, *History of the League for Industrial Rights*, New York, 1925, pp. 28-29.)

42. *Dowd v. United Mine Workers of America et al. (The Coronado Case.)* In September, 1914, the Coronado Coal Company, through Dowd, its receiver, filed a suit for damages against the international union of the miners, the Arkansas union, and others, in the District Court for the Western District of Arkansas. The company complained of losses incurred through the destruction of property in a strike, and asserted that the events were part of an illegal conspiracy to restrain interstate commerce in coal. The suit was accordingly brought under the Sherman Act. The defendants asserted first, that they, being unincorporated associations, could not be sued, and second, that they had not violated the Sherman Act. The District Court sustained the demurrer of the unions. Dowd thereupon appealed to the Circuit Court of Appeals, Eighth Circuit, on a writ of error. On July 21, 1916, that court reversed the judgment of the court below and ordered the trial to proceed. The court ruled against the unions on both points in their demurrer. *Dowd v. United Mine Workers of America et al.*, 235 Fed. 1. The trial of the suit in the lower courts resulted in a verdict of \$200,000 for the plaintiffs. This amount was trebled by the court and a counsel fee of \$25,000 plus interest was added. The unions then appealed on error to the Circuit Court of Appeals, asserting again that as unincorporated associations they were not suable and that they had not engaged in a conspiracy to restrain interstate commerce. The court ruled against them on both points, reversed the judgment of the District Court as to interest, but affirmed it in other respects. *United Mine Workers of America et al. v. Coronado Coal Company*, 258 Fed. 829. Thereupon the defendants appealed on a writ of error to the Supreme Court. In a decision rendered June 5, 1922, the court reversed the judgment and remanded the case to the District Court for further proceedings.

It held (1) that there was no evidence to show that the international union was officially responsible for the strike, (2) that that affair was purely a local issue, and (3) that the restraint of trade occurring as a result of it was relatively unimportant, and did not justify the conclusion that the Sherman Act was violated. It also held that a union might sue or be sued just as though it were a corporation. *United Mine Workers of America et al. v. Coronado Coal Company*, 259 U. S. 344. In October, 1923, the new trial resulted in a verdict for the unions. On appeal, brought by C. H. Finley, receiver for the company at the time, the Circuit Court of Appeals, on July 12, 1924, affirmed the judgment of the trial court. Finley based his appeal on alleged new evidence, but the Circuit Court, reviewing the new facts, found nothing justifying a change from the position stated by the Supreme Court. *Finley et al. v. United Mine Workers of America et al.*, 300 Fed. 972. Finley then carried his appeal to the Supreme Court, which rendered a decision on May 25, 1925. The court again declared that there was no evidence to hold the international union responsible for the damages incurred by the company. It asserted, however, that the Arkansas unions were guilty of violating the Sherman Act and should have been held for damages. This view of the court was based upon new evidence which showed that the Arkansas officers of the union intended to affect interstate commerce when they called the strike, and that the production of the company was much greater and thus much more important in its effect upon interstate commerce than had been supposed. The court ordered the judgment in favor of all the defendants except the international union reversed, and remanded the case for a new trial. *Coronado Coal Company v. United Mine Workers of America et al.*, 268 U. S. 295. On October 17, 1927, the case was dismissed by order of the District Court after an adjustment had been made between the parties whereby the union paid the plaintiffs \$27,500, the costs of the trial scheduled for the next month. (*Monthly Labor Review*, Vol. 25, p. 1291, De-

ember, 1927.) (9 *Law and Labor* 295.) (*Monthly Report*, American Civil Liberties Union, September-October, 1927, p. 2.)

43. *Pennsylvania Mining Company v. United Mine Workers of America et al.* The company brought suit for damages in the District Court for the Western District of Arkansas. It complained that it had suffered losses from the attempt of the miners to organize its plant in 1915, and from violence occurring as a result. It asserted that if its operations had not been interfered with it could have mined 500 tons of coal a day, and maintained that the acts of the unions were part of a conspiracy to restrain interstate commerce in violation of the Sherman Act. The jury returned a verdict of \$100,000 for the company. This judgment was trebled by the court. The defendants then appealed on a writ of error to the Circuit Court of Appeals for the Eighth Circuit. That court, on July 12, 1924, rendered a decision reversing the judgment of the court below and ordered a new trial. It asserted, on the basis of the first Supreme Court decision in the Coronado case, that the international union was not responsible for the damages incurred, and that the acts of the defendants were so indirectly related to interstate commerce as not to be embraced by the Sherman Act. *United Mine Workers of America et al. v. Pennsylvania Mining Company*, 300 Fed. 965. As a result of the new trial in the District Court the trial judge instructed a verdict for the international union, J. P. White, its former president, and several others. The case as to the Arkansas union and the remaining defendants was submitted to the jury, which failed to agree. The company appealed to the Circuit Court of Appeals, asserting that the trial court had erred in its instructions to the jury. The Circuit Court of Appeals considered the additional evidence against White and the international union insufficient, and affirmed the judgment of the court below. *Pennsylvania Mining Company v. United Mine Workers of America et al.* 28 F (2) 851. October 13, 1928.

44. *Christian v. International Association of Machinists et al.* Christian, who was a car foreman on the Chesapeake and Ohio

Railroad in the summer of 1922, brought suit for damages against various unions connected with the railway strike, alleging that he had lost his position because of the conspiracy of the defendants in restraint of interstate commerce and in violation of the Sherman Act. The case was brought in the District Court for the Eastern District of Kentucky. The defendants moved to quash service of process. The court, in a decision rendered April 1, 1925, refused to quash service as to System Federation 41, but did so as to the local officers of the international unions, asserting that they were not agents of their internationals. 7 F (2) 481. The case was finally dismissed on motion of the plaintiff at his own cost. (Letter of May 7, 1929, from Clerk of United States District Court, Covington, Ky.)

IV. PRIVATE SUITS FOR INJUNCTIONS.

45. *Blindell et al. v. Hagan et al.* In December, 1892, the crew of a British steamer in port at New Orleans walked off the ship just before it was due to sail. On the ground that this constituted a conspiracy in restraint of interstate and foreign commerce in violation of the Sherman Act the agents sought an injunction against the crew in the Circuit Court of the Eastern District of Louisiana. The court, on February 9, 1893, ruled that private parties could not sue for an injunction under the Sherman Act. The plaintiffs had also asked for an injunction on general equity grounds, and the court granted the petition on that basis. This is the first reported instance of an attempt to invoke the Sherman Act against labor. 54 Fed. 40. Affirmed in 56 Fed. 696.

(45 a. *Wabash Railway Company v. Hannahan et al.*, 121 Fed. 563. In March, 1903, the locomotive fireman's and the railway trainmen's unions were planning a strike for higher wages against the Wabash Railway. The company brought suit for an injunction against the union officers to restrain them from calling the strike. The bill of complaint asserted that the unions' purpose was to secure a closed shop by means of an unlawful conspiracy to interfere with the operation of trains in violation

of the Interstate Commerce Act of 1887 and of the Sherman Act. The Circuit Court for the Eastern District of Missouri, Eastern Division, issued a temporary restraining order forbidding the calling of the strike. On April 1, 1903, after argument, it rendered a decision vacating the restraining order and denying a preliminary injunction, holding that the defendants had a right to call the strike. The court did not discuss the Act of 1890, remarking that "counsel have not by proof or argument drawn the federal anti-trust act of July 2, 1890, into consideration in this case." 121 Fed. 563, 567, [Since it appears that the complainant's argument before the court when the restraining order was granted was not concerned, except by brief mention in the bill of complaint, with the Sherman Act, and since that measure was not considered in the later proceeding, this case is not covered by the data in the text concerning the number and nature of the various proceedings against labor under the act.]

46. *National Fireproofing Company v. Mason Builders' Association et al.* The plaintiff company sued for an injunction under the Anti-trust Law in the Circuit Court of the Southern District of New York. It complained that the builders' association and various bricklayers' unions, the defendants, were operating under an agreement which contained two rules injuring its own interests. The first of these rules provided that the employers must include in their contracts not only bricklaying, but much work connected with it, such as the setting of fireproofing arches and slabs. The second rule provided that bricklayers would work only for those complying with the agreement. The plaintiff found itself unable to get subcontracts for fireproofing because of this agreement. The court dismissed the complaint and the plaintiff appealed to the Circuit Court of Appeals, Second Circuit. That court affirmed the decision of the lower court on March 26, 1909. It asserted that since the agreement did not affect interstate commerce it was not reached by the Sherman Act, and that even if it did come under the

statute, private parties were not entitled to an injunction under it. 169 Fed. 259.

47. *Hitchman Coal and Coke Company v. Mitchell*. As a result of a suit in equity begun October 24, 1907, the Circuit Court of the Northern District of West Virginia had issued a preliminary injunction restraining the attempts of the United Mine Workers to organize the employees of the Hitchman Company. On September 21, 1909, the court refused to modify or dissolve the injunction. One of the charges against the union was that it was an attempt to monopolize labor in violation of the Sherman Law. The court did not consider this charge at the time. 172 Fed. 963. On December 23, 1912, the same court, now known as the District Court, rendered a decision after a final hearing. It declared that the United Mine Workers was an unlawful organization under the statute, because it attempted to create a monopoly of mine labor, and because it had joined a conspiracy with the operators from other states to restrain the coal trade of West Virginia. The court therefore concluded that the union, an unlawful organization, had no right to induce the plaintiff's employees to join it. The injunction was also upheld on general equity grounds, and was made perpetual. *Hitchman Coal and Coke Company v. Mitchell*, 202 Fed. 512. The defendants appealed to the Circuit Court of Appeals, Fourth Circuit, which reversed the judgment of the court below on May 28, 1914. That court denied that the United Mine Workers was an unlawful organization, declared that the Sherman Act could not be a basis for an injunction sought by a private party, and asserted that the union's attempt to organize the company's employees, despite the fact that they had signed an anti-union contract, was not unlawful. *Mitchell v. Hitchman Coal and Coke Company*, 214 Fed. 685. The company appealed to the Supreme Court, which, in a majority opinion rendered on December 10, 1917, reversed the judgment of the Circuit Court. It made no mention of the Sherman Act, though it did assert that the union's purpose was unlawful. It declared that the union's attempt to

organize was equivalent to inducing breach of contract, and was thus unlawful. Justice Brandeis, with whom Justices Holmes and Clarke concurred, wrote a dissenting opinion approving the position of the Circuit Court of Appeals. *Hitchman Coal and Coke Company v. Mitchell*, 245 U. S. 229.

(47a. *Post v. Bucks Stove and Range Company et al.* 200 Fed. 918. While appeals from the decision granting an injunction against the American Federation of Labor and others in the Bucks Stove boycott were pending before the United States Supreme Court, the firm and the unions arrived at an amicable settlement. Under one of its provisions the company waived its right to sue the unions for damages because of past controversies. C. W. Post, a stockholder of the company, displeased with the settlement, brought suit in the Circuit Court for the Eastern District of Missouri to enforce for the company a cause of action against the unions for triple damages under the Sherman Act. Post asserted that the boycott had violated the Sherman Act, that the loss to the firm was \$250,000, that its agreement to waive the right to sue was without consideration, and that it was illegal and void. The Circuit Court decided against him and he appealed to the Circuit Court of Appeals for the Eighth Circuit. On November 22, 1912, that court affirmed the judgment of the court below. 200 Fed. 918. [Although this case is concerned with a suit for damages under the Act of 1890, the real issue raised was the legality of the settlement between the unions and the firm. On that account the case is not covered by the data in the text concerning the number and nature of the proceedings against labor under the act.]

48. *Irving et al. v. Neal et al.* The plaintiffs were a firm of trim manufacturers who operated a non-union mill in Massachusetts. The defendants were officers of the carpenters' unions in New York who had carried out their district and national rules not to work on non-union trim by distributing "fair lists," by a system of fines on members, and by threatening a strike. A restraining order and a preliminary injunction against interference

with the firm's business had already been issued in the District Court of the Southern District of New York. After a final hearing the court rendered an opinion on November 6, 1913. It declared that the combination was in illegal restraint of trade and a violation of the Sherman Act, but pointed out that no private party could obtain an injunction under the statute. It issued an injunction, however, on the basis of a New York statute making it a misdemeanor to conspire to commit an act "injurious to trade or commerce." 209 Fed. 471.

49. *Paine Lumber Company et al v. Neal et al.* The plaintiffs were trim manufacturers with plants outside of New York who sought an injunction against officers of various carpenters' unions, an association of union trim manufacturers, and the members of an association of master carpenters. The defendants were accused of carrying out an agreement whereby union men would work only on union-made trim and employers would hire only union men. The plaintiffs alleged that this was a conspiracy in restraint of interstate commerce. The District Court of the Southern District of New York, in November, 1913, refused to grant an injunction against the agreement. It agreed that the Sherman Law was being violated, but pointed out that no acts were shown to have been directed against the plaintiffs personally, and that private parties were not entitled to an injunction under the act. 212 Fed. 259. This decree was affirmed by the Circuit Court of Appeals. 214 Fed. 82. An appeal to the Supreme Court resulted in an opinion, rendered by a majority of the court, on June 11, 1917, upholding the opinion of the lower courts. The minority asserted that a private party was not precluded from obtaining an injunction by the Sherman Act, and that in any case injunctions to private parties were permitted by the Clayton Act of 1914. 244 U. S. 459.

50. *Duplex Printing Press Company v. Deering et al.* The machinists' union, in its attempt to organize the Duplex Company's plant in Michigan, instituted a secondary boycott designed to prevent the purchase and use of Duplex presses in New York

City. They induced truckmen to refuse to haul the presses, hindered their being installed and repaired, and appealed to the public not to buy them. The firm brought suit for an injunction in the District Court of the Southern District of New York. The court, on April 23, 1917, refused to grant the decree, asserting that the conduct of the union had been peaceful, lawful, and within its rights, and that, under the Clayton Act, no injunction might be issued. 247 Fed. 192. The complainant appealed to the Circuit Court of Appeals, Second Circuit. That court, on May 25, 1918, handed down a decision affirming the opinion of the lower court. Each of the three judges agreed that the boycott was a violation of the Sherman Act. Two of them, however, believed that the Clayton Act had changed the situation and had legalized the secondary boycott. The third judge thought an injunction should have been granted. 252 Fed. 722. The issue was then appealed to the Supreme Court, which, on January 3, 1921, rendered a majority opinion reversing the lower courts and directing that an injunction restraining the acts of the defendants be issued. The majority, asserting that the boycott was clearly a violation of the Sherman Act, declared that such an act had not been made lawful by the Clayton Law. Justice Brandeis dissented, with the concurrence of Justices Holmes and Clarke, and asserted his belief that the secondary boycott had been legalized. 254 U. S. 443.

51. *Wagner Electric Manufacturing Company v. District Lodge, No. 9, International Association of Machinists et al.* The Wagner Company was in 1918 manufacturing goods, both in its private capacity and under contract for the government, most of which went into interstate commerce. The union had called a strike for the eight-hour day and a closed shop. The company asked for an injunction to prevent the interference with its interstate commerce caused by the strike. The District Court of the Eastern District of Missouri, on June 6, 1918, rendered a decision on the defendants' motion to dismiss. The court ruled against the union, declaring that the company was entitled to an

injunction under the Sherman Act, and declining to dismiss the suit. 252 Fed. 597.

52. *Dail-Overland Company v. Willys-Overland, Inc. et al.* In May, 1919, the Toledo local of machinists called a strike at the plant of the Willys-Overland Company. As a result production of automobiles stopped and considerable violence occurred. The Dail-Overland Company, which had the Willys-Overland agency in North Carolina and had contracts under which cars were to be delivered by the manufacturers' sales organization, brought suit for an injunction on June 5, 1919, in the District Court for the Northern District of Ohio, Western Division, against the manufacturing company, its sales organization, and the machinists' union. The complainant asserted that it was being injured because it could not deliver cars, and asked for an order compelling the company to resume manufacturing and the strikers to cease interference. It complained also that there was a conspiracy to interfere with interstate commerce in violation of the Sherman Act. The court issued a restraining order and an injunction in June, ordering the company to open the plant and setting regulations for picketing. The strikers failed to appear at the hearings. Later there was a hearing on the question as to whether the injunction should be made permanent. The strikers now appeared and asserted that all the companies should have been joined, and that the Willys-Overland Co. was really on the side of the plaintiffs. They declared that the companies had been separated only so that diversity of citizenship might bring the case into the federal court. The court denied the validity of this position. It declared further that jurisdiction also existed because of the violation of the Sherman Act which the defendants admitted by default when they failed to appear and answer the charge that they were illegally interfering with interstate commerce. 263 Fed. 171. The injunction was made permanent on December 27, 1919. (2 *Law and Labor* 33, February, 1920.)

53. *Jewel Tea Company v. International Brotherhood of Teamsters et al.* The teamsters' union, in an attempt to organize the

drivers employed by the Jewel Tea Company in St. Louis, carried on active picketing against them. On the plea that it was engaged in receiving and selling goods in interstate commerce the company obtained a restraining order from the District Court for the Eastern District of Missouri, Eastern Division, on May 22, 1919. The defendants were enjoined from interfering with the company's employees by force, threats or intimidation. A preliminary injunction was issued on June 14, 1919, the court declaring that the defendants were guilty of a combination in violation of the Sherman Act. (*Law and Labor*, July, 1919, p. 11.)

54. *Herkert and Meisel Trunk Company et al. v. United Leatherworkers' International Union et al.* In April, 1920, the union began a strike against five companies, which resulted in the shutting down of the plants. About 90 per cent of the companies' contracts involved interstate business. When the strike took place the companies had unfilled orders of the value of \$327,000. The only basis under which the case could come into the federal court was the Sherman Act. The companies charged a conspiracy in restraint of interstate trade and sought an injunction to restrain interference by the picketers in the District Court for the Eastern District of Missouri. The court declared that the Sherman Act was being violated, and, on November 26, 1920, ordered a permanent injunction granted. 268 Fed. 662. The union appealed to the Circuit Court of Appeals, Eighth Circuit. In a decision rendered on October 19, 1922, a majority of the three judges affirmed the decree of the lower court. The third judge dissented. He declared that the Sherman Act did not reach manufacturing within a state, and asserted that the consequence of the majority's decision would be to render every strike illegal if the entry of any appreciable amount of goods into interstate commerce were affected. *United Leather Workers v. Herkert and Meisel Trunk Co.*, 284 Fed. 446. The union then appealed to the Supreme Court. On June 9, 1924, a majority of the court rendered an opinion reversing the judgment of the lower courts, and declaring that the obstruction to interstate

commerce involved in the strike was too indirect and remote to be considered a violation of the Sherman Act. Justices McKenna, Van Devanter, and Butler dissented. *United Leather Workers v. Herkert and Meisel Trunk Company*, 265 U. S. 457.

55. *Buyer v. Guilan et al.* The plaintiff, who was engaged in the notion business, had twice taken goods for shipment to the Old Dominion Line, but had had the goods refused because they came on trucks operated by non-union men. Affidavits showed that various unions of teamsters, longshoremen, etc., had agreed not to handle merchandise transported by companies refusing to recognize the unions. A restraining order against the Old Dominion Line, its agents, and the unions, had been granted in the District Court for the Southern District of New York. This order was later vacated in the same court. The plaintiff appealed to the Circuit Court of Appeals, Second Circuit. On February 2, 1921, that court declared that, in view of the Supreme Court decision in the Duplex case, the combination must be held a conspiracy in violation of the Sherman Act. It directed the court below to issue a preliminary injunction. 271 Fed. 65.

56. *Gable et al. v. Vonnegut Machinery Company et al.* A strike was called at the plant of the Toledo Machine and Tool Company for the purpose of preventing open shop operation. The Toledo Company was an Ohio corporation. The Vonnegut Company, an Indiana corporation, complained that the strike interfered with the production of goods which the Toledo Company was under contract to deliver to it, and was thus a conspiracy in violation of the Sherman Act. It secured an injunction against the union and the Toledo Company in the District Court, restraining interference with production. The union appealed to the Circuit Court of Appeals, Sixth Circuit, asserting that the Toledo Company was wrongly made a defendant in order to secure the diversity of citizenship necessary to bring the case into the federal court. The court, on July 19, 1921, declared that the companies should not have been separated, and that the District Court had no jurisdiction by reason of diverse citizenship. It

held also that the strike interfered with interstate commerce so incidentally and indirectly that the Sherman Act was not involved. The decree of the lower court was reversed. 274 Fed. 66.

57-68. *Red Jacket Consolidated Coal and Coke Company v. United Mine Workers et al. (The Red Jacket Cases.)* On September 30, 1920, the Red Jacket Company sought an injunction against the United Mine Workers in the District Court of the Southern District of West Virginia, charging that the union was engaged in a conspiracy, illegal under the Sherman Act, to restrain interstate commerce in West Virginia coal (Case 57). Similar suits were brought in the same court on September 26, 1921, by the Borderland Coal Corporation (Case 58); on April 8, 1922, by the Alpha Pocahontas Coal Company and 57 other companies (Case 59); on April 4, 1922, by the Aetnae Sewell Smokeless Coal Company and 76 other companies (Case 60); on April 15, 1922, by the Dry Branch Coal Company and 14 other companies (Case 61); on April 24, 1922, by the Nelson Fuel Company and five other companies (Case 62); on May 22, 1922, by the Leevale Coal Company and one other company (Case 63); on June 1, 1922, by the Seng Creek Coal Company and one other company (Case 64); on June 3, 1922, by the Raleigh Wyoming Coal Company and two other companies (Case 65); on June 19, 1922, by the Anchor Coal Company and 67 other companies (Case 66); and on July 4, 1922, by the Southern States Coal Company and seven other companies (Case 67). In all these cases temporary injunctions were issued, which were slightly modified by the Circuit Court of Appeals for the Fourth Circuit. (7 *Law and Labor* 276, November, 1925.) As thus modified the injunctions enjoined the miners from interfering by threats, molestation, or violence with those seeking employment; from trespassing; and from persuading employees to sever their contracts of employment. *Keeney v. Borderland Coal Corporation*, 282 Fed. 269, June 8, 1922; *Dwyer v. Alpha Pocahontas Company and four other cases*, 282 Fed. 270, July 19, 1922; *United Mine Workers v. Leevale Coal Company*, 285

Fed. 32, December 6, 1922. On September 18, 1922, the Carbon Fuel Company and 22 other companies (Case 68) asked for an injunction against the miners and certain operators who had signed agreements, charging a conspiracy in restraint of trade in coal. The court granted the injunction, which restrained the operation of the check-off system. On March 20, 1922, the court also enjoined the union from sending money into West Virginia for the purpose of organization. On March 24, 1922, Judge Waddill of the Circuit Court of Appeals suspended the injunction orders against the check-off and organization. (5 *Law and Labor* 150, June, 1923.) On May 7, 1923, the Court of Appeals directed that an injunction similar to those in the previous cases be issued to the Carbon Fuel Company. In addition the union was to be restrained from keeping strikers in company houses unlawfully. *United Mine Workers v. Carbon Fuel Company*, 288 Fed. 1020. In May, 1923, the 12 suits here described were consolidated and tried. The District Court rendered a decision on October 16, 1925, holding the union to have conspired to restrain interstate commerce in coal. Separate injunction decrees were issued, the terms of which were those approved by the Circuit Court of Appeals in the Carbon Fuel Company case. The cases were appealed to the higher court, which, on April 18, 1927, rendered a decision affirming the injunctions and approving nearly all of the findings of the District Court. *United Mine Workers v. Red Jacket Consolidated Coal and Coke Company* and 11 other cases, 18 F. (2) 839. (7 *Law and Labor* 276, November, 1925.) On October 17, 1927, the Supreme Court denied a petition to appeal the case on a writ of certiorari. 72 L. ed. 112.

69. *Borderland Coal Corporation v. United Mine Workers et al.* The company, operating in West Virginia, sought an injunction in September, 1921, against the union and the operators of the Central Competitive Field to restrain the latter from checking-off miners' dues, and the former from using any of its funds to organize the non-union mines in Mingo County, West Virginia, and Pike County, Kentucky. On October 31,

1921, the District Court of Indiana granted a temporary injunction to this effect. The court declared that there was clear evidence of the existence of an unlawful conspiracy between the miners and the union operators to destroy competition in the sale of coal, and that such a conspiracy violated the Sherman Act. 275 Fed. 871. The union thereupon appealed to the Circuit Court of Appeals, Seventh Circuit, which rendered an opinion on December 15, 1921. The court held that the check-off and peaceful attempts to organize were lawful, that an injunction might properly be issued in the present case to prevent injury to property, but that it should restrain only the unlawful acts of the miners. *Gasaway v. Borderland Coal Corporation*, 278 Fed. 56.

70. *Danville Brick Company v. Danville Local, United Brick and Clay Workers, et al.* As a result of a strike of brick workers in 1921, the company sought and obtained a preliminary injunction in the District Court, Eastern District of Illinois, on June 7, 1921, against certain of the strikers' activities. The sole ground for jurisdiction was the alleged violation of the Sherman Act. The union appealed to the Circuit Court of Appeals, Seventh Circuit, which reversed the decree on July 27, 1922. The court declared that since the strikers had not interfered with transportation, the restraint upon interstate commerce, despite the fact that most of the product was destined to be shipped out of the state, was too insignificant to be covered by the Sherman Act. *Danville Local Union, United Brick and Clay Workers v. Danville Brick Company*, 283 Fed. 909.

71. *Great Northern Railway Company v. Great Falls Local, International Association of Machinists, et al.* In the course of the shopmen's strike the railroad sought an injunction against the acts, both violent and peaceful, of the strikers, claiming that since the strike was an unlawful interference with interstate commerce in violation of the Sherman Law, all acts done to carry it on were unlawful. The District Court of the District of Montana, in decisions rendered on July 27, 1922, and September 8,

1922, asserted that the interference with interstate transportation was an unintended consequence, and confined the injunction to threats and acts of violence. The court refused to enjoin peaceful persuasion. 283 Fed. 557.

72. *Great Northern Railway Company v. Perkins*. On July 19, 1922, the Great Northern Railway Company brought suit for an injunction in the District Court of the Western District of Washington, against the striking railway shopmen. The defendants were charged, among other things, with a conspiracy in restraint of interstate commerce in violation of the Sherman Act. On July 31, 1922, the court issued a preliminary injunction restraining interference with the company's employees by means of force, threats, suggestion of danger, etc. Loitering and trespassing were also forbidden, and picketing was limited to one representative of the strikers at each entrance to or exit from the company's property. (4 *Law and Labor* 253, September, 1922.)

73. *Chesapeake and Ohio Railway v. Brotherhood of Railway and Steamship Clerks*. During a strike of the railway clerks the railway company, about August 5, 1922, obtained several injunctions in the District Court of the Western District of Virginia. The injunctions were issued on the assumption that the strike violated the Sherman Act. The unionists and all persons "associated with them" were enjoined from "abusing, intimidating, molesting, annoying, insulting, and interfering" with persons seeking employment with, or in the employ of, the company. Thereafter the strikers asked Taliaferro, a barber whose shop was near the freight house, to post a placard in his shop window. This was done. The placard was inscribed, "No scabs wanted in here." Taliaferro was soon after charged with violating the terms of the injunction, and after trial for contempt was fined \$200. The court declared that the act of exhibiting the placard tended to restrict interstate transportation. *United States v. Taliaferro*, 290 Fed. 214. October 2, 1922. Taliaferro appealed to the Circuit Court of Appeals, Fourth Circuit, which, on May 21, 1923, affirmed the judgment of the court below. Though the court did

not mention the Sherman Act it upheld the District Court. *Taliaferro v. United States*, 290 Fed. 906.

74. *Silverstein v. Local No. 280, Journeyman Tailors' Union*. Silverstein, an employing tailor, sought an injunction against his striking employees on the ground that some of the product normally entered interstate commerce. He charged a conspiracy to violate the Sherman Act. The District Court of the Eastern District of Missouri refused to grant the injunction and the plaintiff appealed to the Circuit Court of Appeals, Eighth Circuit. On October 19, 1922, that court affirmed the lower court's judgment. It asserted that there was no evidence to show that the strikers intended to restrain interstate commerce, and that the strike's effect was not direct or substantial enough to indicate such an intent. 284 Fed. 833.

75. *Curran Printing Company v. Allied Printing Council et al.* A strike took place at the plant of the company, which did a nation-wide business in the printing of railroad tickets. The strike was part of a national campaign of the Typographical Union for a 44-hour week. The company, whose plant was being picketed, applied for an injunction on the ground that the defendants were engaged in a conspiracy in restraint of interstate trade. On March 7, 1923, the District Court in St. Louis rendered an oral opinion in favor of the plaintiff. The court declared that the interference with the company's interstate commerce was appreciable and that the strike, which was one of many then being carried on by the International Typographical Union, was part of a nation-wide combination in violation of the Anti-trust Act. (5 *Law and Labor* 91, April, 1923.)

76. *Western Union Telegraph Company v. International Brotherhood of Electrical Workers, Local Union 134 et al.* This was a suit for an injunction under the Sherman Act against the electricians' union. The company, which operated open shop, employed men who installed call boxes and other devices in buildings under construction. In order to prevent the employment of these non-union men the union threatened to call strikes. The

District Court in Chicago, on July 16, 1924, granted an injunction against the union, on the ground that its activities, by hindering the installation of equipment for the sending of messages, constituted a conspiracy in restraint of interstate commerce. Since diversity of citizenship existed, the court held the injunction desired might be issued to prevent the unlawful boycott as well. The union was ordered not to call strikes or to interfere with the business of the company. 2 F (2) 993. (6 *Law and Labor* 208, August, 1924.) The union appealed to the Circuit Court of Appeals, Seventh Circuit, which rendered a decision on June 1, 1925. That court, making no reference to the allegation with respect to interstate commerce, affirmed the injunction on the basis of the law respecting secondary boycotts. *International Brotherhood of Electrical Workers v. Western Union Telegraph Company*, 6 F (2) 444.)

77. *Bedford Cut Stone Company et al. v. Journeyman Stone Cutters' Association of North America et al.* Before 1921 the stone cutters' union had operated under agreements with the stone companies about Bedford, Ind. Thereafter it was unable to get the firms to deal with it. In accordance with its rules the union instructed its members not to work on any stone cut under non-union conditions. These instructions were carried out in different parts of the country. The firms, asserting that the union was guilty of a conspiracy in violation of the Sherman Act, asked for a temporary injunction in the District Court of Indiana. The injunction was denied and the plaintiffs appealed to the Circuit Court of Appeals, Seventh Circuit. That court, in a decision rendered on October 28, 1925, affirmed the judgment of the court below. It held that no intention to interfere with interstate commerce appeared, and that the union was within its rights in trying to induce the membership not to handle non-union stone. Though the act might in some degree tend to restrain interstate commerce the appellees had not resorted to unlawful means to accomplish their lawful purpose. 9 F (2) 40. The firms thereupon appealed to the Supreme Court, which, on April 11, 1927,

reversed the judgment of the lower courts. The majority asserted that the union had intended to restrain interstate commerce in the plaintiffs' product, that it had carried on a secondary boycott which violated the Sherman Act, and that it should have been enjoined. Although Justices Stone and Sanford concurred, they did so only because they considered the decision in *Duplex v. Deering*, 254 U. S. 443, controlling. Justice Brandeis, with whom Justice Holmes concurred, dissented. He declared that the acts of the union did not impose an unreasonable restraint upon interstate commerce and that the case was different from that in *Duplex v. Deering*. *Bedford Cut Stone Company et al. v. Journeyman Stone Cutters' Association et al.*, 47 Sup. Ct. Rep. 522. An injunction in line with the majority decision was issued by the District Court on October 8, 1927. (9 *Law and Labor* 297, November, 1927.)

78. *Toledo Transfer Company v. International Brotherhood of Teamsters*. The company operated taxicabs in Toledo, Ohio, and had contracts with various railroads to carry passengers from one station to another on through tickets in interstate transportation. The company's drivers struck, picketed the stations and the company's office, and prevented it from carrying on its business. The firm brought suit for an injunction against the union on the ground that the latter was unlawfully restraining interstate commerce. The District Court issued a restraining order, and later a temporary injunction. The court found the existence of an unlawful conspiracy in restraint of interstate commerce. The defendants were enjoined from violent, threatening, and annoying picketing, from loitering, and from interfering with the plaintiff's business. (7 *Law and Labor* 33, February, 1925.)

79. *Columbus Heating and Ventilating Company v. Pittsburgh Building Trades Council et al.* The defendant unions, in order to aid the sheet metal workers in organizing the company's plant in Columbus, Ohio, ordered the employees of the company, a furnace manufacturer, not to work for the firm in Pittsburgh,

and threatened to call a general strike of the building trades if the company continued to carry out its contracts to install furnaces. The District Court of the Western District of Pennsylvania, on February 1, 1927, granted a preliminary injunction against the unions on the ground that their acts constituted a violation of the Sherman Act. They were enjoined from causing sympathetic strikes and from ordering their members not to install the company's furnaces. 17 F (2) 806. (9 *Law and Labor* 52, March, 1927.)

80. *Decorative Stone Company v. Building Trades Council of Westchester County et al.* The machine stone workers' union, the members of which worked in New York City, refused to work on machine-cut stone if any such stone not manufactured by themselves was also being used on buildings in the city. In order to compel builders to use machine-cut stone only when made by union men in New York it had secured the cooperation of other organizations whose members were actually engaged in construction. The company sued for an injunction and damages under the Sherman Act in the District Court of the Southern District of New York. On March 26, 1927, the court granted an injunction. It asserted that since the purpose of the combination was to exclude stone cut outside the Metropolitan District from that district, there was a clear violation of the Sherman Act. The court denied the request for damages. 18 F (2) 333. The company appealed from this decision to the Circuit Court of Appeals, which, on January 9, 1928, affirmed the opinion of the lower court. It held that the anti-trust laws made no provision for damages in an action for an injunction. (10 *Law and Labor* 54, March, 1928.)

81. *Pittsburgh Terminal Coal Corporation v. United Mine Workers et al.* The company, in connection with the bituminous coal strike of 1927, sought an injunction which would restrain the union from interfering with its attempt to operate and from aiding the strikers occupying company houses to continue to do so. The company, whose normal output was 12,000,000 tons per

year, 70 per cent of which entered interstate commerce, declared that the strike was a conspiracy in violation of the Sherman Law. The District Court, Western District of Pennsylvania, in a decision rendered on September 30, 1927, approved this position, and, assuming jurisdiction under the Sherman Act, issued a preliminary injunction prohibiting further attempts to maintain the strikers' families in company houses, and restricting the strikers' activities to closely regulated peaceful picketing. 22 F (2) 559.

82. *Barker Painting Company v. Brotherhood of Painters', Decorators and Paperhangers*. The Barker company did a painting and decorating business in New York and other states. The union rules required that contractors doing such business must in all places pay the highest wages and operate the fewest hours which were in effect in any of the various places in which they did business; in other words, the most favorable conditions should be in effect wherever the work was done. They were also required to employ workers at least 50 per cent of whom were local residents. The company, while doing work in Washington, obtained a temporary restraining order in the Supreme Court of the District of Columbia against these rules. This injunction was later dismissed and an appeal was taken to the Court of Appeals of the District of Columbia. The plaintiffs claimed that the enforcement of the union rules under penalty constituted a conspiracy in violation of the Anti-trust Law. The court, in a decision rendered November 7, 1927, affirmed the dismissal of the injunction by the lower court, and declared that since the union was lawfully carrying out its legitimate objects, it could not be held to be violating the Sherman Act. 23 F (2) 743.

83. *Aeolian Company et al. v. Fischer et al.* In 1925 the Organ Workers' Union in New York was defeated in a strike for the purpose of organizing the men employed by the organ companies to install organs. The union induced the building trades to refuse to work on buildings in which non-union men installed organs. The companies, asserting that they had plants outside of the state, asked for an injunction on the ground that there was

a conspiracy in restraint of interstate trade and commerce in violation of the Sherman Act. The District Court, Southern District of New York, in a decision rendered on May 15, 1928, refused an injunction, asserting that the defendants' acts, being interferences with the local installation of organs for a purely local purpose, were not reached by the Sherman Act. 27 F (2) 560. The companies appealed to the Circuit Court of Appeals, Second Circuit, which, on December 10, 1928, rendered a majority opinion affirming the decision below. In a dissenting opinion Judge Manton expressed the belief that the acts of the defendants constituted a secondary boycott affecting the interstate sale of organs and constituting a violation of the Anti-trust Act. 29 F (2) 679. After a final hearing the District Court, on October 8, 1929, handed down a decision reaffirming its earlier decision. 35 F (2) 34.

Note. The following cases, coming into the courts after the year 1928, are included here in order that the record may be as complete as possible. They are not covered by the data concerning the number and nature of the various proceedings against labor under the act.

84. *Rockwood Corporation of St. Louis v. Bricklayers' Local Union No. 1*, 33 F (2) 25. The plaintiff, with a plant at East St. Louis, Ill., manufactured out of gypsum a fire-proof building material which it called Rockwood lumber. Although bricklayers ordinarily installed gypsum blocks this material was made of long slabs, with tongues and grooves, and with joints to be closed plastically. Carpenters began to install the material and as a result a jurisdictional dispute arose between them and the bricklayers. In 1927 a bricklayers' business agent in St. Louis ordered his men off a job if the carpenters continued to install Rockwood lumber. The bricklayers quit work for a short time, after which the carpenters withdrew and the bricklayers went back to work. Though the bricklayers' agent did not request it the plaintiff's material was removed. Thereafter architects, contractors, and

builders in St. Louis ceased specifying Rockwood lumber for fear of labor trouble. The company brought a suit for damages and an injunction under the Sherman Act against the bricklayers' union. The District Court of the Eastern District of Missouri refused to uphold the suit on the grounds that the business agent alone was responsible for what happened, that a single person could not be guilty of a conspiracy, and that hence the Sherman Act, which prohibited conspiracies in restraint of interstate commerce, had not been violated. The plaintiff appealed to the Circuit Court of Appeals, Eighth Circuit. On May 13, 1929, that court handed down a decision affirming the judgment of the lower court. 33 F (2) 25. It declared that even if the existence of a conspiracy had been proved it could not be considered a violation of the Act of 1890, since it had no such purpose and since its effect upon interstate commerce was indirect and remote.

85. *Alco-Zander Company et al. v. Amalgamated Clothing Workers of America et al*, 35 F (2) 203. In the summer of 1929 the Amalgamated Clothing Workers brought to a culmination its campaign to organize the Philadelphia clothing market with a series of strikes. On September 4 the complainants, eight firms manufacturing men's clothing in Philadelphia whose employees had gone on strike, filed two bills in equity in the United States District Court of the Eastern District of Pennsylvania against the union and its officers. One of the bills was based on an alleged violation of the Sherman Act, and the other on an alleged violation of the common law. On September 9 the court issued temporary restraining orders substantially as prayed for, which were modified on September 16 to prevent misunderstanding as to their scope. They were intended to prevent various activities carried on in connection with strikes and were especially worded so as to prevent peaceful persuasion. On September 20 it was stipulated that the orders should be deemed preliminary injunctions. The union appealed from the judgment. Thereafter, on October 8, 1929, Judge Kirkpatrick of the District Court handed down a written opinion so that the records might show the rea-

sons for the issuance of the injunctions. 35 F (2) 203. The court, relying principally upon the Supreme Court decision in *Hitchman v. Mitchell*, asserted that the defendants' acts were in violation of the common law, since they had the unlawful purpose of preventing production in Philadelphia except upon a union basis. Basing its conclusions upon the second Coronado decision, the court declared that the defendants had also violated the Sherman Act. The court had held that the strikes were carried on primarily to prevent non-union clothing manufactured in Philadelphia from competing in interstate commerce with that produced in the union centers. One of the results of the injunctions was the introduction in the United States Senate, by Senator LaFollette, on September 16, 1929, of a resolution authorizing an investigation of the case by the Committee on the Judiciary or a subcommittee thereof. (*Congressional Record*, Vol. 71, p. 3784.) (Such an investigation had not yet taken place in April, 1930.) In March, 1930, it was reported that the eight complainant firms had applied to the courts to dismiss the injunctions against the defendants. It was asserted that all of these firms except the Alco-Zander Company had entered into agreements with the union. As a result Judge Buffington, of the Circuit Court of Appeals, directed that the record of the case be returned to the District Court and the petition for dismissal of the suit be disposed of there. (*Advance*, Vol. XVI, No. 11, March 14, 1930.)