

Book Tower Garage v United Auto Workers

Michigan's New Deal

295 Mich 580 (1940)

The Great Depression that began in 1929 caused the greatest political upheaval since the Civil War. It ended a 70-year period of Republican dominance in American politics and turned Michigan from a solidly Republican state into a competitive two-party state. Above all, Franklin D. Roosevelt and the New Deal Democratic Party signaled a popular acceptance of a much larger role for the government in the socioeconomic system. The nineteenth-century political economy of classical or “laissez-faire” liberalism gave way to a more centrally regulated, bureaucratic order. Organized labor became one of the most powerful interest groups in the New Deal political coalition, and the United Auto Workers became a political force in Michigan. The Michigan Supreme Court made an important gesture recognizing the new place of labor unions in the 1940 *Book Tower* decision; the decision reversed several decades of labor law and gave greater license to unions to picket during strikes.

In the late nineteenth century, the United States was transformed from a rural and small-town agricultural economy into an urban and industrial one. Millions of people moved from the countryside, both American and European, into industrial wage labor. The law of industrial labor relations was largely established by the Civil War. The northern, Republican, abolitionist vision of “free labor” triumphed over the southern system of chattel slavery. In essence, the free labor philosophy applied the contractual idea discussed in the *Sherwood*¹ case to labor relations. The state took for granted that competent parties were free to make employment contracts on any terms they found mutually advantageous. Employer and employee were perfectly equal before the law; neither party could use force or compulsion on the other. Coercion was the essence of slavery; its absence defined free labor. What resulted was known as “employment at will.” Either party could terminate the contract for any reason whatsoever—employers could not force employees to work, nor could employees compel employers to retain them, if the other party did not desire it. The state would not interfere as individuals bargained over wages, hours, and working conditions.

By and large, Americans accepted the free labor or “laissez-faire” system. The overall benefits of a free market outweighed the harshness, selfishness, and even cruelty, that the ethos of “every man for himself, and the devil take the hindmost,” might promote.



The UAW, which was founded in May 1935 in Detroit, began a strike on the Book Tower Garage in 1940.

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Critics, reformers, and radicals in the nineteenth century denounced the whole philosophy, arguing that the formal equality of employer and employee was a sham and that the overwhelming power of corporations permitted them to impose “wage slavery” on their workers. Roscoe Pound, the dean of Harvard Law School and one of the chief critics of laissez-faire legalism, observed that it was absurd for judges to pretend that a billion-dollar corporation like U.S. Steel and a penniless immigrant really bargained about the terms and conditions of employment, “as if [they] were farmers haggling over the sale of a horse.”²

To some degree, the states and federal government took steps to mitigate the harshness of the system. They enacted laws that prohibited child labor, limited the hours that women could work, and limited the hours even of adult males in particularly hazardous occupations. Labor unions were among the more controversial and legally contentious ways in which workers tried to reform the industrial labor-relations system. Simply put, labor unions were voluntary associations of workers who tried to use their combined power to augment their individual bargaining power with their

employers. Legally, they were perfectly free to attempt to do so. It is unclear whether American courts ever actually regarded labor unions as inherently “criminal conspiracies,” although they were “combinations in restraint of trade.” The 1842 Massachusetts decision, *Commonwealth v Hunt*, explicitly recognized the legality of labor unions.³ The problems came when unions attempted to compel employers to bargain with them, since employers had the right, in “free labor” terms, to refuse to recognize unions, and indeed to fire employees who joined unions.

The next step after gaining legal recognition/exemption from criminal conspiracy prosecution for union members who faced recalcitrant employers was to begin a “strike,” to withhold their labor in an effort to bring economic pressure on their employer. In most cases, workers were perfectly free to quit *en masse*; they could not be compelled to work. However, in most cases, industrial workers could be easily replaced and business would continue as usual. Thus, unionists adopted tactics such as boycotting and picketing, in which they would try to persuade other workers not to take their jobs and to persuade customers to refuse to deal with struck employers. Employers responded in kind, using professional strikebreaking firms, detectives and spies, and blacklisting union organizers. Strikes had a tendency to degenerate into violence, with threats and assaults used against the “scabs” and “finks” who would replace striking workers. “With few exceptions,” one study notes, “labor violence in the United States arose in specific situations, usually during a labor dispute. The precipitating causes have been attempts by pickets and sympathizers to prevent a plant on strike from being reopened by strikebreakers, or attempts of company guards, police, or even National Guardsmen to prevent such interference.”⁴ Something akin to industrial warfare accompanied the great railroad strike of 1877, the Homestead strike of 1892, and the Pullman strike of 1894. Public opinion usually turned against the unionists when violence broke out, and at that point the power of the state, and courts in particular, broke most strikes.

Many observers doubted that strikes could be anything other than coercive. “Those who tell you of trade-unions bent on raising wages by moral suasion alone are like people who tell you of tigers that live on oranges,” Henry George said in the late nineteenth century.⁵ “There is and can be no such thing as peaceful picketing, any more than there can be chaste vulgarity, or peaceful mobbing, or lawful lynching,” a federal judge said in 1905.⁶ Thus, workers had the right to organize unions, and to strike, but very few means to make a strike *effective*. “From the definitions given,” noted one late nineteenth-century treatise, “all strikes are illegal. The wit of man could not devise a legal one. Because compulsion is the leading idea of a strike.”⁷

Labor leaders regarded such opinions as evidence that the state, and the courts especially, were animated by class prejudice. They were especially incensed at the development of the injunction in labor disputes. Employers whose businesses were threatened by strikers resorted to equity proceedings. Equity was a legal system separate from that of the common law. In English history, there were prerogative courts where special judges (“chancellors”)

could provide extraordinary remedies in cases in which the common law was inadequate. In strikes, employers could not sue a union (they were almost never incorporated), or await suit or prosecution of its individual members. Local law-enforcement officers were often overwhelmed, or sympathetic to the strikers, and the owner might suffer irreparable harm as he sought legal redress. Judges issued injunctions—orders to strikers to desist from interfering in the employer’s business. Preliminary injunctions could be issued quickly, with only the employer’s testimony and without any kind of jury trial. If strikers violated the injunction, they could be cited for contempt of court, fined, and jailed. Injunctions thus could be effective instruments for foiling strikes.

The federal courts and state courts issued injunctions in labor disputes, and the United States Supreme Court overturned congressional and state efforts to limit injunctive relief for employers.⁸ Though they were always granted after violence or threats, injunctions sometimes prohibited even peaceful picketing.⁹ The Michigan legislature enacted the Baker Conspiracy law in 1877, prohibiting intimidation of workers, destruction of property, and interference in business. It was repealed in 1891, but the courts extended the same protection, particularly in the Supreme Court’s 1898 *Beck* decision.¹⁰ Jacob Beck and Sons, a grain milling company, sought an injunction against the Railway Protective Association, which demanded that Beck agree to their terms of employment and hire only union members. Beck refused, and the union engaged in a variety of threatening and violent acts. Beck won an injunction from the circuit court against violence and threats, but sought a Supreme Court modification of the injunction to prohibit all picketing. In a unanimous opinion, the Court granted the wider injunction, stating that “The law sanctions only peaceful means,” whereas the boycott and picketing were “threatening in their nature.”¹¹

Organized labor mounted a campaign to defeat Justice Claudius B. Grant, the author of the *Beck* decision, in his 1899 reelection bid, but failed. The Supreme Court repeatedly affirmed *Beck* over the next 25 years.¹² Michigan’s Supreme Court was the only state high court that ever ruled that completely peaceful picketing could be enjoined.¹³ This is not to suggest that picketing ceased in Michigan. Employers did not always seek injunctions against picketing; some courts tried to interpret the *Beck* rule in a way that would permit picketing; unions continued to picket despite injunctions, for a great deal depended on local enforcement of court orders.¹⁴

Federal and state governments gradually adopted more pro-union policies in the first third of the twentieth century. The effort had the greatest effect in the railroad industry, because of the economic power of skilled railroad brotherhoods and the devastating effects of nationwide transportation disruptions. Congress attempted



The Flint auto plant strikes were among the most important strikes in Michigan and laid the groundwork for later strikes like the one at Book Tower Garage. Here, union workers and sympathizers march toward a rally supporting the Flint auto plant strike in Detroit’s Cadillac Square in early 1937.

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It is hard to comprehend how overwhelmingly Republican Michigan had been. Republicans had carried Michigan in every presidential election since 1856. They had won 34 of 38 gubernatorial elections, and took every statewide elective office except one since 1854. They controlled every legislative session except one, and in 1924 there was not a single Democrat elected to the state legislature. “The Michigan Democratic party was near extinction by 1930,” one historian observes.¹ The Depression saved it. The party made small gains in the 1930 election, especially in the large cities. In 1932, Michigan gave its first post-Civil War presidential electoral vote to a Democrat, gave control of the legislature to the Democrats, sent a majority-Democrat delegation to Congress, and elected a Democrat governor for the first time since 1912.²

1. Ortquist, *Depression Politics in Michigan, 1929–33* (New York: Garland, 1982), p 38; Dunbar & May, *Michigan: A History of the Wolverine State*, 3d ed (Grand Rapids: Eerdmans, 1995), pp 515–519. Under the 1908 Constitution, Michigan Supreme Court elections were overtly partisan until 1939. After 1939, parties could nominate judicial candidates at their conventions, but no partisan affiliation appeared on the ballot. It seems that no Democrat was elected to the Michigan Supreme Court in the twentieth century until George E. Bushnell in 1934.
2. Dunbar & May, *Michigan*, *supra*, p 519.

to curb federal court injunctions and to exempt unions from antitrust prosecutions. Some state courts adopted a more pro-union stance on picketing than Michigan’s.¹⁵ But it was not until the Great Depression, and the political turnover that it brought about, that unions made significant legal advances.

Michigan agriculture and mining were already ailing in the generally prosperous 1920s, but industrial employment was booming. The economy went into a slump in mid-1929, and in the next year, 20 percent of Michigan’s non-farm work force was unemployed. Auto production fell from five million to barely one million. Unemployment reached 30 percent in 1931, over 40 percent in 1932, and perhaps 50 percent in 1933, the worst year of the Depression. The distress caused by the Depression spelled doom for the Republican Party in the state.

Organized labor became a major constituency in the New Deal coalition. The American Federation of Labor (AFL) was already making its power felt during the Hoover administration, lobbying to prevent the confirmation of John J. Parker to the United States Supreme Court and securing the passage of the Norris-LaGuardia Act, which effectively limited federal courts’ power to issue injunctions in labor disputes. Roosevelt’s legislative centerpiece, the National Industrial Recovery Act, contained a provision to promote collective bargaining, though this was largely evaded by employers and the act was struck down by the United States Supreme Court. Congress then enacted a stronger labor law, the National Labor Relations (Wagner) Act, in 1935. This statute compelled employers to recognize and bargain with unions elected by a majority of their workers, outlawed various anti-union tactics, and established a National Labor Relations Board to enforce the act. With all of these legislative encouragements, the power of labor unions grew, culminating in the formation of the Congress of Industrial Organizations (CIO), led by

John L. Lewis of the United Mine Workers, which set out to organize unskilled workers in the mass-production industries like autos, steel, rubber, and meatpacking.

The CIO threw itself completely behind Roosevelt and the Democrats, producing even greater Democratic majorities in 1934 and 1936. In Michigan, labor backing helped to restore the governorship to the Democrats, aiding in the election of Frank Murphy, whom President Roosevelt had campaigned for. Many large employers expected the United States Supreme Court to strike down the Wagner Act, and resisted the drives by the AFL and CIO to organize their plants. Some of the most violent clashes occurred in the Michigan auto industry. The United Auto Workers (UAW) went beyond picketing and adopted a new tactic, the “sit-down strike,” in which strikers occupied and refused to vacate auto plants. An increasing number of law-enforcement officials, sympathetic to unions, refused to enforce court orders against strikers. Governor Murphy made it perfectly clear that he would not use force to oust the sit-down strikers. Some of the largest industrialists, like General Motors and U.S. Steel, came to terms with the CIO; others resisted and benefited from a public backlash against the militant sit-down tactic. In 1937, when Chicago police killed 10 strikers outside of the Republic Steel Plant, Roosevelt’s reaction was to express “a plague o’ both your houses.” The United States Supreme Court ultimately held that sit-down striking was illegal.¹⁶ Governor Murphy lost his re-election bid in 1938, a year in which Democrats suffered major setbacks, but was appointed U.S. attorney general and then to the United States Supreme Court in 1940.

These national changes soon had an impact on Michigan labor law. In 1940, the United Auto Workers attempted to organize the Book Tower Garage, an auto-service business in Detroit. When J. B. Book fired union organizers, the UAW claimed that he had violated the Michigan version of the National Labor Relations Act, and began a strike. Their picketing drove away Book’s chief suppliers and customers, and Book sought an injunction in Wayne County Circuit Court, producing affidavits showing violence and intimidation that had interfered with his business. Like an increasing number of circuit courts, the court issued an injunction that prohibited violence and intimidation, but allowed peaceful picketing. Book appealed to the Michigan Supreme Court for a broader injunction that would prohibit all picketing.¹⁷

By 1940, Democrats had obtained a majority of seats on the Michigan Supreme Court, with the four justices elected in 1934, 1936, and 1938 (George E. Bushnell, Edward M. Sharpe, Bert D. Chandler, and Thomas F. McAllister). A Republican, Harry S. Toy, was appointed in 1935, but was defeated when he sought election in 1936.¹⁸ The Democratic tidal wave led Republicans to propose an appointive system to replace the elective system that had been in place in Michigan since 1850. An amendment to do so was voted down in 1938, but the next year a constitutional amendment provided that justices appear on the ballot without a partisan identification, though they could continue to be nominated in partisan primaries.¹⁹ While the Court was considering Book’s appeal, the United States Supreme Court struck down an Alabama law that prohibited peaceful picketing. The opinion, *Thornhill v Alabama*,

written by the former governor and newly appointed Justice Frank Murphy, declared that picketing was “free speech” and protected against state encroachment by the Fourteenth Amendment.²⁰ The Michigan Supreme Court followed suit and denied Book’s request for a broader injunction, without precisely overturning *Beck*. “The law has always sanctioned peaceful means of advertising a labor dispute,” Justice Butzel claimed; it condemned only “force, violence, threats of force or violence, intimidation, or coercion.” There could be such a thing as peaceful picketing, and such peaceful picketing was now protected as an exercise of free speech.²¹

Just as *Beck* and its progeny did not end picketing in Michigan, so *Book Tower Garage* did not give unions an unlimited right to picket. Almost immediately after *Thornhill* and *Book Tower*, the courts began to retreat from the implications of the picketing-as-free-speech doctrine. In 1941, the United States Supreme Court adopted a rule very much like *Beck*’s, that even peaceful picketing could be prohibited when it took place in a general atmosphere of violence.²² In several other cases during the decade, the “Court moved consistently toward the position that picketing was so bound up with elements of economic coercion, restraint of trade, labor relations, and other social and economic problems that a large measure of discretion in regulating it must be restored to the states.”²³ Michigan courts followed this line of development, restricting picketing if its purposes or methods were unlawful.²⁴ As one commentator put it, picketing was a “legal Cinderella,” which a fairy-godmother Supreme Court allowed to be a princess only until midnight.²⁵

Organized labor’s political power crested during World War II. The courts’ retreat from picketing-as-free-speech was part of a general postwar reaction that culminated in the Taft-Hartley Act of 1947. Picketing, even violent picketing, continued, as it had in the *Beck* years, depending on the reaction of local and federal authorities.²⁶ In states like Michigan, where organized labor and Democratic power became entrenched, and which did not use the Taft-Hartley Act’s option to become “right-to-work” states, unions did not need the weapon of picketing as much. What the *Book Tower* case revealed most was the increasing influence of federal policy on state power. Labor relations, heretofore regarded as a strictly local matter, were now profoundly influenced by Congress’s power to regulate interstate commerce. The idea that the First Amendment’s guarantee of freedom of speech could limit state regulation of civil liberties was perhaps even more important. This was part of the process known as the “incorporation” of the Bill of Rights, which had limited only the federal government until the twentieth century. Both of these developments—the nationalization of socioeconomic policy and of Bill of Rights standards—would have tremendous impact on Michigan law in the coming decades. The weakening of state power was among the most significant legacy of the New Deal.²⁷

FOOTNOTES

1. *Sherwood v Walker*, 66 Mich 568; 33 NW 919 (1887).
2. Pound, *Liberty of contract*, 18 Yale LJ 454 (1909). For a contrary view, see Reynolds, *The myth of labor’s inequality of bargaining power*, 12 J Lab Res 167 (1991).

3. *Commonwealth v Hunt*, 45 Mass 111 (1842).
4. Graham & Gurr, *The History of Violence in America: A Report to the National Commission on the Causes and Prevention of Violence*, rev ed (New York, 1970), p 281.
5. George, *The Condition of Labor: An Open Letter to Pope Leo XIII* (New York, 1891), p 86.
6. *Atchison, Topeka, and Santa Fe Ry v Gee*, 139 F 582, 584 (SD Iowa, 1905).
7. Cogley, *The Law of Strikes, Lockouts, and Labor Organization* (Washington: W. H. Lowdermilk, 1894), p 223.
8. *Adair v US*, 208 US 161; 28 S Ct 277; 52 L Ed 436 (1908); *Coppage v Kansas*, 236 US 1; 35 S Ct 240; 59 L Ed 441 (1915); *Truax v Corrigan*, 257 US 312; 42 S Ct 124; 66 L Ed 254 (1921).
9. The standard works critical of labor injunctions are Frankfurter & Greene, *The Labor Injunction* (New York: Macmillan, 1930) and Witte, *The Government in Labor Disputes* (New York: McGraw-Hill, 1932). The contrary case is made in Poulson, *Criminal conspiracy, injunctions, and damage suits in labor law*, 7 J Legal Hist 212 (1986), and Petro, *Injunctions in labor disputes*, 14 Wake Forest L R (1978).
10. Faue, “Methods of Mysticism” and the Industrial Order, in *The History of Michigan Law*, eds Finkelman & Hershock (Athens, OH: Ohio Univ Press, 2006), p 217.
11. *Beck v Railway Teamsters Protective Union*, 118 Mich 497, 525; 77 NW 13 (1898).
12. Cooper, *The fiction of peaceful picketing*, 35 Mich L R 75 (1936).
13. *Clarge v Lufhringer*, 202 Mich 612; 168 NW 440 (1918); Petro, *Injunctions, supra* at 462; Derifield, *Defining peaceful picketing: The Michigan Supreme Court and the labor injunction, 1900–40* (MA thesis, Western Mich Univ, 2005), pp 80–96.
14. Derifield, *Defining peaceful picketing, supra* at 8, 50, 65–73, 91; McCracken, *Strike Injunctions in the New South* (Chapel Hill: Univ of NC Press, 1931), p 143; Taylor & Witney, *U.S. Labor Relations Law: Historical Development* (Englewood Cliffs, NJ, 1992), p 94.
15. Poulson, *Criminal conspiracy, supra* at 226; Petro, *Injunctions in labor disputes, supra* at 475 and Petro, *Unions and the southern courts: Part II—Violence and injunctions in southern labor disputes*, 59 NC L R 901, 905 (1981).
16. *NLRB v Fansteel Metallurgical Corp*, 306 US 240; 59 S Ct 490; 83 L Ed 627 (1939).
17. Derifield, *Defining peaceful picketing, supra* at 96, 103–105, 111–115.
18. A fourth Republican, William W. Potter, died in 1940 and did not participate in the decision.
19. Brennan, *Nonpartisan election of judges: The Michigan case*, 40 SW LJ 23 (1986); *The Proposed Amendment to the Michigan Constitution Providing for the Appointment of Supreme Court Judges*, National Lawyers Guild Quarterly 1 (1937–38), p 319.
20. *Thornhill v Alabama*, 310 US 88; 60 S Ct 736; 84 L Ed 1093 (1940).
21. *Book Tower Garage v Local 415, United Auto Workers*, 295 Mich 580; 295 NW 320 (1940).
22. *Milk Wagon Drivers v Meadowmoor Dairies*, 312 US 387; 61 S Ct 687; 85 L Ed 903 (1941); *Decisions*, 41 Colum L R 727 (1941), regarded this decision as an “unjustifiable abridgement of freedom of expression.”
23. Kelly, Harbison, & Belz, *The American Constitution: Its Origins and Development*, 7th ed (New York: W. W. Norton, 1991), pp 524–525; Teller, *Picketing and free speech*, 56 Harv L R 180 (1942).
24. Kurtz, *Stranger picketing and its present status in Michigan*, 35 U Det LJ 517 (1957–58).
25. Price, *Picketing—A legal Cinderella*, 7 U FLA L R 143 (1954).
26. Thieblot & Haggard, *Union Violence: The Record and the Response by Courts, Legislatures, and the NLRB* (Philadelphia: Wharton School, 1983).
27. Kelly, Harbison, & Belz, *The American Constitution, supra* at 500.

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