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Picketing of Third Parties to Industrial Disputes in New York

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COMMENTS

PICKETING OF THIRD PARTIES TO INDUSTRIAL DISPUTES IN NEW YORK [1]

The past several decades, pregnant with the seeds of social unrest among the laboring classes, have given birth to profound changes in the status and conditions of employment of those who labor in our modern economic vineyard. Rights historically proclaimed are presently being put to practice. "For in vain would rights be declared, in vain directed to be observed, if there were no method of recovering and asserting those rights, when wrongfully withheld or invaded."[2] These elementary observations are within the experience of even the most unlearned. But the innumerable legal problems which stem from the recognition as a practical reality of labor's right to strike and bargain collectively, for example, bid fair to create enigmas in the law great enough to confuse even the most scholarly laborers after judicial truth. The acknowledgement of labor's right to strike, has led to an admission that labor may picket in order to publicize, and thereby gain popular support of, the end for which the strike was called.[3] The right to picket raises the question: Against whom may the picketing be directed? And, again, to what extent, if any, may the so-called area of free discussion in industrial disputes be defined and judicially determined so as to safeguard property rights of innocent third parties caught in the web of conflicting interests of the disputants, without circumscribing the constitutional guarantees of free speech?[4] It is the purpose of this article to analyze the approach to this problem adopted by the New York courts.[5]

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1. This Comment is intended to supplement and bring down to date a Comment on the subject of picketing published in the Fordham Law Review some time ago. Comment (1940) 9 FORDHAM L. REV. 95-111. In the present article, the spotlight of legal analysis will be focused upon the law relative to picketing of third parties to industrial disputes.

2. 1 BL. COMM. *56. *Cf.* also, Andrews, J., in Exchange Bakery v. Rifkin, 245 N. Y. 260, 265, 157 N. E. 130, 133 (1927).

3. "Members of a union might, without special statutory authorization by a State, make known the facts of a labor dispute, for freedom of speech is guaranteed by the Federal Constitution." Brandeis, J., in Senn v. Tile Layers' Union, 301 U. S. 468, 478 (1937). *Cf.* also opinion of Murphy, J., in Thornhill v. Alabama, 310 U. S. 88, 102 (1940). The problem in all these cases, however, is in determining the bounds of the dispute, and the corresponding sphere in which picketing is lawful.

4. ". . . deprivation of these essential liberties cannot be reconciled with the rights guaranteed to the people of this Nation by their Constitution." Black, J., dissenting in Milk Wagon Drivers Union v. Meadowmoor Dairies, 312 U. S. 287, 317 (1941). See Warren, *The New "Liberty" Under the Fourteenth Amendment* (1926) 39 HARV. L. REV. 431. *Cf. also,* N. Y. CONST. Art. 1, § 8; N. Y. LABOR RELATIONS ACT, N. Y. Laws 1937, c. 443, N. Y. LABOR LAW §§ 700-715.

5. Emphasis will be laid on recent developments in the law relative to picketing of third parties generally, and specifically, reference will be made to a recent Court of Appeals decision as indicative of the modern trend in the law.

In a recent case before the New York Court of Appeals, *People v. Muller*,[6] the defendant, member of the Electrical Workers' Union Local No. 3, which was engaged in a *bona fide* labor dispute with the National Wiring & Protective Company[7] (lessor of complainant's burglar alarm system), was convicted of the crime of disorderly conduct[8] in that he picketed the premises of the complainant, a retail haberdasher, in whose shop one of the systems had been installed in 1935, under a self-renewing lease. The terms of the lease included an incidental agreement for exclusive servicing of the alarm by the lessor. The stipulated facts concede that the picketing was conducted in a peaceful[9] and orderly manner, and it is likewise conceded that employees of complainant are not involved in the controversy. The majority of the court held, in a four-three decision, that "the picketing is for the purpose of promoting the lawful interests of a labor union in a labor dispute",[10] and the court thereupon affirmed the order reversing the defendant's conviction of disorderly conduct. In a well reasoned dissent, Judge Finch argued that "the picketing of this ultimate consumer, who is not engaged in the industry in which the labor dispute has arisen, provides a true secondary boycott which has always been held an unlawful labor objective and which this court has recently condemned."[11]

The fundamental question in this case was whether a shopkeeper who has leased a burglar alarm system from the vendor-manufacturer becomes a party to a labor dispute[12] between the manufacturer and his employees, by virtue

6. 286 N. Y. 281, 36 N. E. (2d) 206 (1941). Hereinafter referred to, in both the text and footnotes, as the Muller case.

7. National Wiring & Protective Company is hereinafter referred to as the Company; the Electrical Workers Union is called simply the Union.

8. N. Y. PENAL LAW § 722, provides: "Any person who with intent to provoke a breach of the peace, or whereby a breach of the peace may be occasioned, commits any of the following acts shall be deemed to have committed the offense of disorderly conduct. . . . (2) Acts in such a manner as to annoy, disturb, interfere with, obstruct, or be offensive to others."

9. Where picketing has been accompanied by violence, the courts have been unanimous in restraining it. Milk Wagon Drivers Union v. Meadowmoor Dairies, 312 U. S. 287 (1941); May's Furs & Ready-to-Wear, Inc. v. Bauer, 282 N. Y. 331, 26 N. E. (2d) 279 (1940).

10. The Muller case, Lehman, Ch. J., at 284.

11. The Muller case, Finch, J., dissenting at 289.

12. In determining the area of a "labor dispute" for the purpose of defining the rights of parties to such controversies, the New York Courts have adopted, in actions at law as well as in equity, the definitions enacted by the legislature in the New York anti-injunction statute, N. Y. Laws 1935, c. 477, N. Y. CIV. PRAC. ACT § 876-a. The New York statute is modeled closely after the Federal Norris-LaGuardia Act, which the federal courts had previously made use of in determining the issue of a "labor dispute" regardless of the nature of the action. 47 STAT. 70-73 (1932), 29 U. S. C. A. §§ 101-115 (Supp. 1938).

N. Y. CIV. PRAC. ACT (1935) § 876-a provides in part: "10—When used in this section, and for the purpose of this section: (a) A case shall be held to involve or to grow out

of the shopkeeper's leasing and servicing agreement with the manufacturer. In the *Muller* case, the burglar alarm system had been serviced for almost five years by union help. But no labor of any kind was performed after the labor contract between the Union and the lessor Company expired.[13] Upon the shopkeeper's refusal to hire members of the Union to service the burglar alarm, the Union picketed his place of business. The majority of the court in determining that the shopkeeper was a party to the industrial dispute between the Company and the Union, predicated its argument upon two rather tenuous tenets: (1) that the maintenance contract established the requisite "unity of interest" between the manufacturer and the customer of the product; from this premise the court reasoned, to complete the argument, (2) that this was therefore a case involving a "labor dispute."[14] The court, moreover, in a strong *dictum* argued that peaceful picketing, under circumstances such as those in the *Muller* case, is an exercise of the right of free speech, which may not be denied regardless of the degree of interest of the party picketing.[15]

Unity of Interest

The doctrine of "unity of interest" represents a rather recent development in the liberal interpretation by the New York courts of the rights of trade unions in industrial disputes. For years, the question of labor's right to strike and to advertise their grievances by picketing was confined to the employer-employee relationship.[16] The avenue of liberal thought in the attitude of the New York Court of Appeals toward picketing was first opened by the case of *Exchange Bakery v. Rifkin*.[17] But the Court therein was still confronted with a situation involving only the original parties to the labor contract; the innocent third party had not yet made his appearance in the picketing cases. The expression "unity of interest" is used by Judge Brandeis in the case of *Duplex Printing Co. v. Deering*[18] denoting what the New York courts referred to at the

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of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft or occupation, or who are employees of one employer; or who are members of the same or an affiliated organization of employers or employees; . . . or when the case involves any conflicting or competing interests in a 'labor dispute' (as hereinafter defined) of 'persons participating or interested' therein (as hereinafter defined)."

13. The Muller case, at 286.

14. Judge Lehman, writing for the majority in the *Muller* case, supports his finding that a "labor dispute" was here involved by the case of Goldfinger v. Feintuch, 276 N. Y. 281, 11 N. E. (2d) 910 (1937); and upon the "restrictive interpretation" given the (anti-injunction) statute in the recent case of Opera on Tour v. Weber, 285 N. Y. 348, 34 N. E. (2d) 349 (1941).

15. The Muller case, Lehman, Ch. J., at 284. Compare A. F. of L. v. Swing, 312 U. S. 321 (1941).

16. Bossert v. Dhuy, 221 N. Y. 342, 117 N. E. 582 (1917); Interborough Rapid Transit Co. v. Lavin, 247 N. Y. 65, 159 N. E. 863 (1928); Stillwell Theatre v. Kaplan, 259 N. Y. 405, 182 N. E. 63 (1932).

17. 245 N. Y. 260, 157 N. E. 130 (1927).

18. 254 U. S. 443, 481 (1921). This dissenting opinion of Justice Brandeis was later

time as "common interest",[19] that is, the interdependence between the members of the same union,[20] or between the employees of the customer and the employees of the vendor-manufacturer.[21] However, one of the earliest uses of this term in New York was in the case of *Goldfinger v. Feintuch.*[22] In that case it was held that the interdependence between the manufacturer and the retailer of his products created a relationship which gave the manufacturer's employees the right to picket the retailer. Such conduct was held to be within that allowable area of economic conflict into which the courts would not intervene.[23] This case represented a further liberalization of the already progressive attitude of the Court of Appeals in cases involving industrial disputes, as expressed in the case of *Stilwell Theatre v. Kaplan.*[24]

"Thus the judges of a great tribunal indicate their conviction that when dealing with legal problems enmeshed in dynamic social forces courts ought to decide only the case before them and to remain open to all the wisdom the future may hold."[25]

The *Goldfinger* decision, handed down shortly after the enactment of the New York anti-injunction statute,[26] went even further than the court in the *Stilwell Theatre* case, and in the spirit of the new statute, held that the employer-employee relationship was not the *sine qua non* of the courts power to interfere for the purpose of denying injunctive relief against peaceful picketing.[27] Thus, despite restrictive language, necessitated by the fact that the court in the *Goldfinger* case, was dealing with the interpretation of a "labor dispute" statute, and not with broad common law principles, as in the case of *Stilwell Theatre v. Kaplan,* the *Goldfinger* case continued the liberal trend of the Court of Appeals in dealing with the right to picket. The definition of "unity of interest", defining the area of union activity in a labor dispute, which was posed by the Court of Appeals in the *Goldfinger* and subsequent decisions, naturally

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crystallized as the federal policy in the Norris-LaGuardia Act, *supra,* note 12, and formally adopted by the majority of the United States Supreme Court. *Cf.* Milk Wagon Drivers Union v. Lake Valley Farm Prod., 311 U. S. 91 (1940); Milk Wagon Drivers Union v. Meadowmoor Dairies, 312 U. S. 287 (1941); United States v. Hutcheson, 312 U. S. 219 (1941).

19. Bossert v. Dhuy, 221 N. Y. 342, 117 N. E. 582 (1917).

20. National Protective Ass'n v. Cummings, 170 N. Y. 315, 63 N. E. 369 (1902).

21. Bossert v. Dhuy, 221 N. Y. 342, 117 N. E. 582 (1917).

22. 276 N. Y. 281, 11 N. E. (2d) 910 (1937). *Accord:* People v. Bergstein, 286 N. Y. 613, 36 N. E. (2d) 454 (1941); Baillis v. Fuchs, 283 N. Y. 133, 27 N. E. (2d) 812 (1940).

23. Goldfinger v. Feintuch, 276 N. Y. 281, 286, 11 N. E. (2d) 910, 913 (1937). *Cf.* also May's Furs & Ready-to-Wear, Inc. v. Bauer, 282 N. Y. 331, 26 N. E. (2d) 279 (1940).

24. 259 N. Y. 405, 182 N. E. 63 (1932).

25. FRANKFURTER AND GREEN, THE LABOR INJUNCTION (1930) 42.

26. N. Y. CIV. PRAC. ACT, § 876-a. Under the statute no injunction may be granted restraining peaceful picketing of "parties to a labor dispute" as defined therein.

27. *Cf.* Finch, J., in Goldfinger v. Feintuch, 276 N. Y. 281, 287, 11 N. E. (2d) 910, 913 (1937).

led to some difficulties of interpretation by the lower courts when they attempted to apply the definition to original fact situations. The lower courts, faced with the problem of determining whether there was a sufficient "unity of interest" necessary to support a determination that a "labor dispute" existed between the parties to the controversy before the court, reached very different conclusions in applying the test established by the highest court of the State.[28]

The Next Step

In *People v. Muller,* the majority of the court adopted a very broad interpretation of the statute.[29] The *dictum* of the court indicates an even more liberal disposition of the problem. For to adopt the *dictum* in the *Muller* case, to the effect that peaceful picketing is an exercise of "free speech" and may not be enjoined whether the requisite "labor dispute" is present or not, is to render practically nugatory the provisions of the anti-injunction statute relative to peaceful picketing.[30] The anti-injunction statute proposed to put an end to the issuance of injunctions prohibiting labor from exercising its lawful rights.[31] Therefore, the legislators provided that no injunction restraining lawful labor objectives could be issued by the courts if there was a finding that a labor dispute existed. The *dictum* in the *Muller* case places peaceful picketing and other lawful labor objectives within the protection of the Constitutional guarantee of "free speech",[32] and thus if followed would render unnecessary the finding of a "labor dispute".

The Court of Appeals had already taken the occasion in the *Goldfinger* case to extend the recently enacted anti-injunction statute beyond its actual language.[33] The case is authority for the rule that injunctive relief against picketing should be denied not only in cases where the parties were in the same trade or industry,[34] (as the statute provides), but wherever a "unity of interest" is found to exist between the parties to the litigation.[35] The *Goldfinger* case was

28. Hydrox Ice-Cream Co. v. Doe, 159 Misc. 642, 289 N. Y. Supp. 683 (1936); Davega-City Radio v. Randau, 166 Misc. 246, 1 N. Y. S. (2d) 514 (1938); American Gas Stations v. Doe, 250 App. Div. 227, 293 N. Y. Supp. 1019 (1937); Abeles v. Friedman, 171 Misc. 1042, 14 N. Y. S. (2d) 252 (1939); Strauss v. Steiner, 173 Misc. 521, 18 N. Y. S. (2d) 395 (1940).

29. The applicable provisions of the statute are set out *supra,* note 12.

30. If peaceful picketing is prohibited because the controversy does not involve a "labor dispute", the main question, still to be determined, is whether the peaceful picketing is not an exercise of the right of free speech. A. F. of L. v. Swing, 312 U. S. 321, 326 (1941); Thornhill v. Alabama, 310 U. S. 88 (1940).

31. Greater City M. P. Ass'n. v. Kahme, 167 Misc. 861, 6 N. Y. S. (2d) 589 (1938).

32. U. S. CONST., AMEND. XIV.

33. See *supra,* note 12.

34. In this connection compare Columbia River Packers Ass'n. v. Hinton, 314 U. S. 600, 62 Sup. Ct. 520 (1942).

35. Goldfinger v. Feintuch, 276 N. Y. 281, 286, 11 N. E. (2d) 910, 913 (1937). Note that although the facts of the *Goldfinger* case fall within the requirements of the statute

cited as authority for the finding of a "unity of interest" in the *Muller* case, although in the latter case the complainant was not a retailer of the vendor-manufacturer's product, but a consumer of the product and the service incidental to the maintenance thereof.[36]

In *People v. Bellows*,[37] the Court was faced with a situation quite similar to that involved in the *Muller* case, except that in the former case there was a *sale* plus a servicing agreement, and in the latter case there was a *leasing* plus a servicing agreement, of the non-union product. The majority of the court held in the *Bellows* case that the consumer of a neon sign was in "no such unity of interest with the manufacturer as was developed in the *Goldfinger* case."[38] Judge Lehman in his opinion in the *Muller* case does not cite the *Bellows* decision, and it is therefore reasonably to be assumed that he adopted, or at least did not disapprove, the distinction drawn by the Appellate Part of Special Sessions.[39] The two cases were distinguished by the Appellate Part upon the criterion that in the *Bellows* case there had been a *sale* of the product (plus an incidental servicing arrangement), while in the *Muller* case the complainant had only *leased* (plus an incidental servicing arrangement) the burglar alarm system.[40] This differentiation is difficult to understand if we consider that in both these cases the picketing was directed against the maintenance and servicing, rather than the sale or leasing of the product,[41] although the picketing was designed to affect adversely the business of the third party generally.[42] To contrast these two cases upon the test that there was a passage of title in one case and a retention of title by the manufacturer in the other brings to light the interesting question of how the court would decide if in the *Muller* case there was a conditional sale rather than a lease of the burglar alarm system.

By the same reasoning employed in the *Muller* case, it could be held, to state the *reductio,* that all the subscribers of the telephone company or any public utility might be subjected to picketing whenever a labor dispute arose between the public utility and its employees.[43] The attempt of the union in the *Muller*

for the presence of a labor dispute, the effect of the decision was to pave the way for the establishment of "unity of interest" as the principle, if not the sole criterion determining the presence or absence of a labor dispute. *Cf.* Wohl v. Bakery & Pastry Drivers Union, 284 N. Y. 788, 31 N. E. (2d) 765 (1940), *rev'd* 314 U. S. 701, 62 Sup. Ct. 816 (1942). *Cf.* also, Opera on Tour v. Weber, 285 N. Y. 348, 34 N. E. (2d) 349 (1941) *cert. denied* 314 U. S. 615, 62 Sup. Ct. 96 (1942).

36. The Muller case, at 284.

37. 281 N. Y. 67, 22 N. E. (2d) 238 (1939).

38. *Id.* at 71.

39. People v. Muller, 174 Misc. 872, 21 N. Y. S. (2d) 1003 (Sup. Ct. 1940).

40. *Id.* at 874. This argument is used by Judge Callaghan, and its basis rests in the court's conclusion that the retention of title in the manufacturer by virtue of the leasing agreement causes the unity of interest between the Union and the Company to follow the product (still the property of the Company) into the hands of the lessor.

41. *Cf.* the Muller case, at 283 (par. 5, stipulated facts).

42. *Id.* at 286.

43. Horn, M., Decision annexed to return, People v. Muller, Papers on Appeal 67.

case to force the subscriber of a burglar-alarm system into breaching his binding, legal obligation with the Company[44] supplying the system, amounts to an infringement of his constitutional right of freedom of contract[45] and can only be justified by evidence of a superior right in the Union responsible for the picketing.[46] And it is not a sufficient safeguard to complainant's rights to say that he has equal opportunity for publication of his side of the question. If the complainant acceded to the Union's demands he would have to subject himself to a right of action for damages by the lessor Company, unless the Union was successful in its prosecution of the strike.[47] All that complainant could have done lawfully to assist the cause of the picketers would have been to exert moral pressure on the Company, by threatening to discontinue his contract with the Company at the expiration of the year. Even if the complainant had insisted on provision in his contract for Union servicing and maintenance, he would have no protection in the event of a so-called "cross-picketing" in a jurisdictional dispute.[48] It is interesting to note, moreover, that if complainant had acceded to the Union's demands he might easily have created just such a situation, and would be subjected to cross-picketing as well as to a right of action by the Company for breach of contract.[49]

There is much to be said for the academic argument that the labor level in both the *Muller* and *Bellows* cases has converged with the marketing level and consequently the "unity of interest" continues throughout the period of servicing, the industrial relationship on the labor level being part and parcel of the marketing system in the industry. However, the New York court does not consider the argument in the *Muller* case.

"Parties To A Labor Dispute"

The New York anti-injunction statute acts to restrain any infringement of the right to picket wherever it is shown that the requisite conditions are present.

44. The stipulated facts concede that by the shopkeeper's contract with the Company for maintenance and servicing of the burglar alarm system, the shopkeeper covenanted to allow no one to service the system save the Company. The Muller case, at 283 (stipulated facts).

45. *Cf.* Lehman, J., in I. R. T. v. Lavin, 247 N. Y. 65, 82, 159 N. E. 863, 869 (1928).

46. *Cf.* Cotillo, J., Busch Jewelry Co. v. United Retail, etc. Union, 168 Misc. 224, 233, 5 N. Y. S. (2d) 575, 583 (1938).

47. The Muller case, Finch, J., dissenting at 286.

48. The anti-injunction statute includes within the definition of a "labor dispute" a controversy "between one or more employees or associations of employees and one or more employees or associations of employees." N. Y. CIV. PRAC. ACT, § 876-a, subd. 10(a).

49. If the complainant had hired the Union, a member of the A. F. of L. to do the work, he would have made himself the employer of the Union, and hence directly liable to picketing by a rival union seeking to represent the members of the Union. United States v. Hutcheson, 312 U. S. 219 (1941). A similar situation is found in the case of Thompson v. Boekhout, 273 N. Y. 390, 7 N. E. (2d) 674 (1937), in which the right of picketing by a rival union is upheld.

The principal requirements of the statute are (1) that a "labor dispute" be found, (2) between "parties to a labor dispute."[50] It may be true that in the *Muller* case there was a "labor dispute" between the Company and the Union, but it is difficult to surmise how it can reasonably be asserted that the complainant shopkeeper was a "party to the labor dispute," either under the wording of the statute,[51] or under the broad interpretation already given by the New York courts in such cases. Hence, the court seems to have neglected the second requisite above, and decided the case simply upon a finding of the primary requisite of a "unity of interest". In so holding the court has denied complainant a remedy for what was previously held to be a substantive wrong, and thereby changed the substantive law to this extent.[52] The result denies complainant, or any third party indirectly involved in a labor controversy, a remedy to prevent unlawful picketing, whether relief be sought in law or in equity,[53] by declaring all peaceful picketing lawful. Such a holding is questionable when the picketing involves interference with the property rights of innocent third parties to the dispute.

Innocents Immune from Picketing?

To what extreme may these weapons of labor be used against third parties who are not principals to the original controversy? If the courts would determine, after they have found a "unity of interest" in an industrial dispute, whether the parties to the litigation were "parties to the labor dispute" under the wording of the statute, they could resolve this question.

It should be mentioned in passing that there was no work being performed on the burglar alarm system in the *Muller* case, when the picketing began, or for some time prior to the commencement of the picketing.[54] We would undoubtedly be confronted with quite a different question if the burglar alarm was being serviced by the use of non-union labor or any other labor which was unfair to the employees of the Company who were striking. Likewise, if there had been non-union servicing of the system shortly before the picketing began, although the question would be more difficult of determination, the courts would probably be justified in allowing the picketing as "organizational."[55]

50. N. Y. CIV. PRAC. ACT § 876-a, subd. 10.

51. *Id.* at subd. 10(b).

52. Crane, J., in People v. Bellows, 281 N. Y. 67, 77, 22 N. E. (2d) 238, 242 (1939).

53. The anti-injunction statute prohibits the issuance of an injunction restraining peaceful picketing in a labor dispute. N. Y. CIV. PRAC. ACT § 876-a, subd. 1 (f-5, 7). By holding that peaceful picketing may not be enjoined or considered disorderly conduct regardless of the degree of interest of the parties, the Court holds in effect, that peaceful picketing may never be restrained either in law or in equity. The Muller case, at 284. Such a holding likewise overrules Katzman v. Kirkman, 18 N. Y. S. (2d) 903 (1940). The *Katzman* case was an identical fact situation in which the complainant obtained an injunction against picketing in front of his premises, regardless of whether the picketing was peaceful or not.

54. The Muller case, at 283 (par. 9, stipulated facts).

55. *Cf.* Andrews, J., Exchange Bakery v. Rifkin, 245 N. Y. 260, 263, 157 N. E. 130, 132 (1927), upholding labor union's right to picket in attempting to "organize" a concern.

The Court of Appeals in the *Muller* case was precluded from a decision based solely on the wording of the criminal statute under which the defendant was tried by the holding in the *Bellows* case that peaceful picketing which constitutes a secondary boycott against a person who has no unity of interest with one involved in a labor dispute does constitute "disorderly conduct".[56] A sounder rule would require complainant not in "unity of interest" with the Union to seek his remedy in equity by injunction, rather than by resort to the criminal statute, which was hardly enacted to prevent peaceful picketing.

Peaceful Picketing and Freedom of Speech

Is peaceful picketing by the members of a union in front of a business served by the union the exercise of the right of free speech guaranteed by the Federal Constitution?[57] Even in this most liberal New York decision, *People v. Muller,* and in the numerous and unprecedentedly liberal decisions of the United States Supreme Court in recent cases involving picketing in labor disputes, there are only strong dicta to support this interpretation of the constitutional guarantee as applied to labor controversies.[58] It has never been decided, at least up to the date of this writing, by either the United States Supreme Court or the Court of Appeals of New York, that the constitutional provisions relative to freedom of speech prevent any restraint being placed on the right of peaceful picketing where there is no "interdependence of economic interest," or "unity of interest" of any kind.[59] It is true, however, that the trend of the decisions as well as the *dicta* in the cases point in the direction of such a holding.

What will be the course of decisions in the future? That is not too difficult to say. If the present trend continues, and the war does not seem likely to change the liberal temper of the New York Court of Appeals toward labor controversies, the court will probably declare that peaceful picketing by a union, in order to advertise their grievance against a party, is an exercise of the right of free speech, and may not be prohibited regardless of whether there is a "unity of interest" between the parties to the litigation or not.[60] Thus the court will announce as decisive, that which they are presently asserting as *dicta* with increasing conviction. The advent of such a holding by the New York Courts may be foreshadowed in the words of Justice Frankfurter in the United States Supreme Court case of *A. F. of L. v. Swing:* "The scope of the 14th Amendment is not confined by the notion of a particular state regarding the wise limits of an injunction in an industrial dispute, whether those limits be defined by statute or by the judicial organ of the state."[61] The pendulum of

56. People v. Bellows, 281 N. Y. 67, 77, 22 N. E. (2d) 238, 242 (1939).

57. *Cf.* Murphy, J., in Thornhill v. Alabama, 310 U. S. 88, 95 (1940).

58. A. F. of L. v. Swing, 312 U. S. 321 (1941); Milk Wagon Drivers Union v. Meadowmoor Dairies, 312 U. S. 287 (1941); Milk Wagon Drivers Union v. Lake Valley Farm Products, 311 U. S. 91 (1940).

59. The recent Supreme Court cases proclaiming the freedom of speech in industrial disputes were all *decided* upon a finding of interdependence of economic interest. Milk