duty of support and of the provision that no order made by F-2 shall supersede any previous order of support is not only that H and W will have to relitigate the question of the extent of the support duty in any subsequent forum, but also that the F-2 order will not constitute a modification of the decree in any subsequent direct proceeding. Direct enforcement does not present these difficulties; but if it is limited to "final" decrees, a two-state proceeding under the Uniform Act may be W's only remedy. The Act does have the advantages, however, of providing W with a reasonably inexpensive procedure for enforcing her right and entitling her to the equitable enforcement procedures.

Because of the defects in the determination of support duties, a direct enforcement proceeding appears preferable. A two-state proceeding would probably be used only where W was unable to afford the expense of direct enforcement of the decree via the full-faith-and-credit approach of the Light decision. This should be particularly true in a state, such as Illinois, which has adopted the Uniform Enforcement of Foreign Judgments Act, so that W will not only be assured of complete substantive recognition of the foreign decree but of the necessary equitable enforcement procedures as well. Therefore, mandatory direct recognition and enforcement of foreign modifiable alimony decrees as suggested in the Light decision's determination that such decrees are entitled to full faith and credit, coupled with equitable enforcement and the amended plans for foreign modification suggested in the Worthley case, offer a necessary and effective step towards a practical solution of the problems of recognition, enforcement, and modification of foreign alimony decrees which have troubled the courts since the Lynde and Sistare decisions.

67 Despain v. Despain, 78 Idaho 185, 300 P.2d 500 (1956). An order entered in California under the Uniform Act was held not to constitute a modification of the original decree. Such a result follows from Section 27 of the Act. The effect of this provision is that H, who has fulfilled his obligations according to the order entered in the enforcement proceeding, may subsequently, in a direct proceeding, find he is still liable for accruals under the decree. Similarly, a support order entered in the responding state has been held not to bar subsequent direct action on the original decree. Stubblefield v. Stubblefield, 272 S.W.2d 633 (Tex.Civ.App., 1954).

FEATHERBEDDING AND THE FEDERAL ANTI-RACKETEERING ACT

Featherbedding describes a great variety of union attempts to preserve the jobs of its members by requiring that work be done by inefficient methods, by requiring employers to have their employees perform services which are unwanted or by forcing employers to hire employees whom they do not want. The

1 See Slichter, Union Policies and Industrial Management 166 (1941). Featherbedding is usually a response to technological change. See generally Aaron, Governmental Restraints on Featherbedding, 5 Stan. L. Rev. 680 (1953); Countryman, The Organized Musicians, 16 U. of Chi. L. Rev. 56, 77–85 (1948).
federal government has made sporadic attempts to control such practices but has met, until recently, with little success in the courts. The most recent attack on featherbedding has been under the Hobbs Anti-Racketeering Act. This comment will review the use of federal statutes to control featherbedding and suggest that the application of the Hobbs Act to featherbedding practices produces results which are both difficult to defend in light of other labor legislation and contrary to legislative intent.

I

The first significant attempt to control featherbedding was under the Sherman Antitrust Act. In 1937 the Justice Department, through Thurman Arnold, then Assistant Attorney-General, announced its intention to prosecute labor organizations under the antitrust laws for a variety of practices including featherbedding. This policy was soon laid to rest by the Supreme Court's decisions in the *Apex* and *Hutcheson* cases which effectively exempted labor unions from liability under the federal antitrust laws. Subsequent attempts to implement the Department's policy of controlling featherbedding under the antitrust laws failed in the courts.

Another attack on featherbedding was directed solely at the American Federation of Musicians. In 1946 Congress passed the Lea or "Petrillo" Act proscribing the use of force, coercion or duress to induce an employer in the broadcasting industry to employ more men than actually needed to perform the work, to pay for men who have not been employed or for services that have not been rendered or to pay more than once for the same services. The Lea Act is the only federal criminal legislation aimed expressly at featherbedding. Although the Supreme Court upheld the constitutionality of the Act, the single attempt to enforce it, the prosecution of James C. Petrillo, was abandoned after the action had been dismissed on the ground that the Lea Act required the defendant to have

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4 See letter from Arnold to Indianapolis Central Labor Union, reprinted in Arnold, The Bottlenecks of Business 249-53 (1940). Objects of the proposed prosecutions included unreasonable restraints to prevent the use of cheaper material, methods or equipment and to compel the hiring of unnecessary labor.
5 *Apex Hosiery Co. v. Leader*, 310 U.S. 469 (1940).
10 332 U.S. 1 (1946).
knowledge that additional men were not needed by the employer and that such knowledge had not been shown.\textsuperscript{12} No further prosecutions were brought under the Act.\textsuperscript{13} It is not clear whether the failure to implement the Lea Act is due to a change in the union's policy, the practical difficulties of proving the requisite knowledge, or a change in governmental policy.

Congress again attempted to control featherbedding through the more flexible machinery of the National Labor Relations Board by making this kind of union activity an unfair labor practice under the Taft-Hartley Act.\textsuperscript{14} The House of Representatives approved a version of Section 8(b)(6), modeled on the Lea Act, which would have applied to many featherbedding practices.\textsuperscript{15} However, the scope of Section 8(b)(6) was narrowed by the Senate. As enacted, Section 8(b)(6) merely made it an unfair labor practice for a union:

to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or are not to be performed.\textsuperscript{16}

The reason, as stated by Senator Taft, that Congress did not proscribe in Taft-Hartley the broad range of featherbedding practices within the purview of the Lea Act was that:

while not approving of featherbedding practices, [it was felt] that it was impracticable to give to a board or a court the power to say that so many men are all right, so many men are too many. It would require a practical application of the law by the courts in hundreds of different industries and a determination of facts which it seemed to me would be almost impossible.\textsuperscript{17}

Thus Congress, aware of the difficulties inherent in the control of featherbedding practices, was unwilling to give the NLRB power to deal with anything other than a very narrow class of such labor activities.\textsuperscript{18}

The Supreme Court has construed Section 8(b)(6) not to cover any attempt by a union to obtain payment to its members so long as they perform actual

\textsuperscript{12} 75 F.Supp. 176 (N.D. Ill., 1948).


\textsuperscript{15} See H.R. 3020, §2(17), 80th Cong., 1st Sess. (1947).


\textsuperscript{17} See 93 Cong. Rec. 6,441, 80th Cong., 1st Sess. (1947). See further Aaron, op. cit. supra note 1, at 680.

\textsuperscript{18} Featherbedding has been incidentally involved in the application of Section 8(b)(4) of Taft-Hartley which deals with secondary boycotts. See Joliet Contractors' Ass'n v. NLRB, 202 F.2d 606 (C.A.7th, 1953), cert. denied 346 U.S. 824 (1954).
services, even though these services are unwanted by the employer and super-
fluous. The Court's interpretation of this Section is consistent with the view
expressed by Senator Taft that Congress believed it too difficult, even for the
NLRB, to determine whether services which are actually rendered by union
members are of value to the employer.

II

The most important attempt to control featherbedding practices has been
under the Copeland and Hobbs Anti-Racketeering Acts. These laws were
designed to make extortion and racketeering affecting interstate commerce pun-

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

It might be argued that Section 8(b)(6) makes it an unfair labor practice to exact payment
greatly in excess of the going daily wage even where services are actually rendered. Cf. Inter-
national Brotherhood of Teamsters (Henry v. Rabouin), 87 N.L.R.B. 972, 978 n.17 (1949),
suggesting that Section 8(b)(6) was intended to cover extortion. However, statements by
Senator Taft in the congressional debates on the Taft-Hartley Act indicate that this section
was intended to cover only the case where no services were in fact rendered or offered. See 93
Cong. Rec. 6443, 80th Cong., 1st Sess. (1947): "Since the matter of exacting money for services
not to be performed borders definitely on extortion, the conferees agreed to the insertion of a
paragraph [Section 8(b)(6)] which makes it an unfair labor practice to cause or attempt to
cause employers to pay money under such circumstances." See also Featherbedding and Taft-
Hartley, 52 Col. L. Rev. 1020, 1027 (1952).

"Any person who (a) obtains or attempts to obtain, by the use of or attempt to use force,
violece, or coercion, the payment of money or other valuable thing, or the purchase or rental
of property or protective services, not including, however, the payment of wages by a bona fide
employer to a bona fide employee; or (b) obtains the property of another, with his consent, in-
duced by the wrongful use of force or fear, or under color of official right; or (c) commits or
threatens to commit an act of physical violence or physical injury to a person or property in
furtherance of a plan or purpose to violate (a) or (b); or (d) conspires with others to commit
any of the foregoing acts" shall be guilty of a felony.

(a) Whoever in any way or degree obstructs, delays or affects commerce or the movement
of any article or commodity in commerce, by robbery or extortion or attempts or conspires so
to do, or commits or threatens physical violence to any person or property in furtherance of a
plan or purpose to do anything in violation of this section shall be fined not more than $10,000
or imprisoned not more than twenty years, or both.
(b) As used in this section—
(1) The term "robbery" means the unlawful taking or obtaining of personal property
from the person or in the possession of another, against his will, by means of actual or threatened
force, or violence, or fear of injury, immediate or future, to his person or property, or property
in his custody or possession, or the person or property of a relative or member of his family or
of anyone in his company at the time of the taking or obtaining.
(2) The term "extortion" means the obtaining of property from another, with his con-
sent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of
official right.
ishable under federal law. However, two cases have extended the Hobbs Act, which superseded the Copeland Act, to cover featherbedding practices.22

The Copeland Act, passed in 1934, made it unlawful for a person to obtain or attempt to obtain by the use of or attempt to use force, violence or coercion, the payment of money or other valuable thing . . . or protective services . . . not including, however, the payment of wages by a bona fide employer to a bona fide employee. . . .23

Most of the early prosecutions under this Act involved the coercion of an employer by a union official who threatened to call a strike unless payment was made to him for his own benefit.24 In these cases the official who received payment was neither an employee of the threatened employer nor was he seeking employment for himself or members of his union. Thus the proviso to the Copeland Act excepting payments to "bona fide employees" was not brought into play.

The first case in which union featherbedding practices were attacked under an anti-racketeering statute was United States v. Local 807, I.B.T.25 In this case a New York City Teamster's local was convicted under the Copeland Act for using force and violence to require truck operators entering the city either to hire a member of the local for the trip in the city or to pay him the prevailing daily wage without accepting his services. The Supreme Court affirmed a reversal of the conviction on the ground that this activity was protected by the proviso to the Copeland Act.

The Local 807 case aroused substantial criticism.26 It was said that the Supreme Court had encouraged "highway robbery" and the exaction of "tribute to enter the city."27 In response to the case, Congress passed the Hobbs Act which was essentially a re-enactment of the Copeland Act eliminating the proviso excepting payment to bona fide employees. It was clear that the Hobbs Act was designed to overrule the Local 807 case,28 but Congress left far from clear the application of that Act to union featherbedding.


28 Speech of Congressman Hancock, id., at 11,900: "This bill is made necessary by the amazing decision of the Supreme Court in the [Local 807] case."

Speech of Congresswoman Summers, id., at 11,909: "It was the purpose of the Judiciary
The purpose of the Hobbs Act may be analyzed in terms of the three situations posed by the Court in the Local 807 case.\textsuperscript{29} At one extreme, there is the clear case of extortion where coercion, including the threat of a strike, is used with the intent of requiring an employer to pay money to a person who is not presently an employee, who is not seeking employment and who has no legitimate claim to the money. At the other extreme, there is the typical feather-bedding situation where coercion is used to obtain or retain actual employment, even though the services rendered are unwanted and superfluous. The first case was clearly a violation of the Copeland Anti-Racketeering Act.\textsuperscript{30} The Court in the Local 807 case made it clear that coercion, if used by a present employee against his employer to maintain an unwanted and superfluous job, would, nevertheless, fall within the proviso to the Copeland Act excepting "the payment of wages by a bona fide employer to a bona fide employee" and would, therefore, not be a violation of that Act. The Court held that the protection of the proviso extended to the person seeking employment on the ground that Congress intended by the proviso to protect "militant labor activity" and that "practically always the crux of a labor dispute is who shall get the jobs and what the terms shall be. . . ."\textsuperscript{31} Thus the Court indicated that the second case was clearly not a violation of the Copeland Anti-Racketeering Act.

Finally, there is what the Court in Local 807 termed the "doubtful" situation which "arises where the defendants . . . tender their services in good faith to an employer and . . . work if he accepts their offer, but . . . [require] that he should pay an amount equivalent to the prevailing union wages if he rejects their proferred services."\textsuperscript{32} The question presented in the Local 807 case was whether there was a violation of the Copeland Act in the "doubtful" situation. The Court, drawing a parallel to the contractual requirement of stand-by orchestras and similar labor agreements, held that such activity was an ordinary incident of a labor dispute and that the proviso operated to exclude all such disputes.\textsuperscript{33}

The legislative history of the Hobbs Act suggested that Congress intended to overrule the Supreme Court's disposition in the "doubtful" situation by making it unlawful to induce, through coercion, the payment of money to a person who renders no actual services. In the House debates references were made to high-
way robbery, tribute, the fact that services were not rendered after being paid and that payment was necessary before truckers would be permitted to deliver their own merchandise. The exaction of payment without an offer or intent to render services was clearly punishable under the Copeland Act; and the statements in the congressional debates were not directed to the violent obtaining of employment but rather to the exaction of payment without a quid pro quo. These statements are, therefore, most intelligible if read in light of the Court’s holding with respect to the “doubtful” situation. Moreover, as will be shown later, any other interpretation of the Hobbs Act would produce arbitrary results.

Most of the cases under the Hobbs Act were clear-cut instances of extortion substantially similar to the early cases under the Copeland Act. These cases involved threats to cause a strike, to continue a strike and to cause “labor trouble” with the intent of exacting payment for the personal benefit of union officials. However, the Hobbs Act, like the Copeland Act in Local 807, was used to attack featherbedding.

In United States v. Kemble defendant sought to obtain employment for a member of his union as a truck driver's helper with a non-union firm making deliveries to a plant with which the union had a closed shop agreement. The need for a helper was disputed, and the demand that one be employed was rejected. Threats and minor violence followed. The defendant was subsequently convicted of attempted extortion under the Hobbs Act. A divided court upheld the conviction on the ground that “payment of money for imposed, unwanted and superfluous services such as the evidence shows Kemble attempted to enforce... by violent obstruction of commerce is within the language and intent of the statute.”


35 Speech of Congressman Springer, id., at 11,910: “[T]hey had to pay tribute to enter the city.”

36 Speech of Congressman Fellows, id., at 11,907: “It is admitted that in some of the instances these stick-up men disappeared as soon as the money was paid without rendering or offering to render any service.”

37 Speech of Congressman Vursell, id., at 11,908: Truck drivers entering the city had to pay the union wage to a teamster “before they would be permitted to drive down the streets of the city to deliver their own truckloads of merchandise.”

41 198 F.2d 889 (C.A.3d, 1952).
42 Id., at 892.
The dissent in the *Kemble* case agreed that the helper's services were unwanted and probably superfluous, but maintained that so long as Kemble was making a bona fide attempt to gain actual employment for a member of his union he was not violating the Hobbs Act. The dissent, recognizing that Congress in passing the Hobbs Act had intended to overrule the *Local 807* case said that

the real quarrel of Congress with the decision was that the Supreme Court had... held within the exception the situation where the services were tendered in good faith and rejected the union still required the employer to pay the equivalent of the prevailing wage.

Under this view the jury would have to be instructed that if it found that the defendant had used force with the sole intent of requiring the trucker to accept the actual services of a member of his union and that there was a bona fide intent that such services would be performed, the defendant would not be guilty of violating the Hobbs Act. The jury would also have to be instructed that, in order to convict Kemble, it would have to find that he used force with intent not to provide any services, or if it found that he was attempting through the use of force to obtain jobs for members of his union, that he had the further intent to exact the equivalent of wages if the proffered services were rejected. The majority in the *Kemble* case rejected any instruction on intent and thus appears to have adopted a more expansive view of the Hobbs Act than did the dissent.

Language in the majority opinion would seem to indicate that it interpreted the statute in the same manner: 

"... it was reasonable for the jury to conclude that Kemble, understanding that Leonard [the truck driver] did not want or need a helper and was not authorized to employ one, nevertheless, insisted that Leonard pay $10, described as a day's wages, for a supernumerary to do what Leonard himself was paid to do and was accomplishing when Kemble intervened." Id., at 890.

Id., at 895.


This would seem to be inconsistent with *Morissette* v. United States, 342 U.S. 246 (1952), which held that a statute penalizing an offense which required a criminal intent at common law must also be interpreted to require such an intent, absent legislative direction to the contrary. At common law extortion required an intent to defraud, and this was negatived by a claim of right or the offer of a quid pro quo. Thus to be consistent with the Morissette doctrine the majority should have required a finding as to the offer of a quid pro quo by Kemble in the form of a helper's services for wages.

Moreover, the definitions in the Hobbs Act were deliberately taken from the New York extortion statute, N.Y. Penal L. (McKinney, 1950) §850. See 91 Cong. Rec. 11,900, 79th Cong. 1st Sess. (1945). This would seem to make the New York decisions especially relevant to the interpretation of the Hobbs Act. Indeed, in construing the Hobbs Act the Third Circuit has said: "We are required to look to the New York Penal Laws ... and the construction given them by the New York courts." *United States v. Nediey*, 255 F.2d 350, 355 (C.A.3d, 1958). The New York courts have held that extortion under the New York penal law requires a "fraudulent intent," i.e., an intent to obtain payment in the absence of a claim of right or offer of a quid pro quo. See *People v. Gassman*, 182 Misc. 878, 45 N.Y.S.2d 709 (Gen. Sess., 1943), aff'd 295 N.Y. 254, 66 N.E.2d 705 (1946).
In *United States v. Green* defendant sought employment for members of his union as swampers with a construction firm. After a refusal to hire them defendant said to the employer, who had inquired if the union was going to strike to stop construction, "Never you mind, I will stop you." Later defendant and a large number of his men appeared on the construction project and derided those who were working there, using such language as "We ought to bash his head in" and "We ought to throw his car into the canal."

The Supreme Court held that an indictment under the Hobbs Act was sufficient if it charged that defendant had attempted by force, violence or fear to obtain "unwanted, superfluous and fictitious" jobs for members of his union, even where it appeared that the members actually intended to do the work. The Court's position appeared to be that the Hobbs Act was directed at both the situation where force was used to get jobs alone and the situation where force was used either to get jobs or to obtain payment without doing any work. Moreover, the Court held that it was without significance that defendant was not seeking any personal benefit. Finally, it suggested that the Hobbs Act operates independently of Section 8(b)(6) of the Taft-Hartley Act so that conduct which does not constitute an unfair labor practice under that section may, nevertheless, violate the Hobbs Act.

The *Green* and *Kemble* cases can reasonably be read to stand for the proposition that the threat or actual use of force or a strike, coupled with a demand that an employer hire men whom he does not want to perform services which are of little value to the employer, constitutes a violation of the Hobbs Anti-Racketeering Act. This construction of the Act would mean that any time a union pressed demands which were inconsistent with maximum efficiency it might possibly incur serious criminal penalties. The implications of such a construction make manifest the need for a limiting principle as a definite guide for determining the union activities made criminal by the Hobbs Act.

The Court in the *Green* case quite properly rejected as a limiting principle a requirement that the conviction of a union official under the Hobbs Act depend upon his having received a direct personal benefit. The *Green* and *Kemble* cases do, however, suggest several possible limitations.


48 The primary duty of a swamper was to scout ahead of bulldozers and warn of approaching pitfalls. *United States v. Green*, 246 F.2d 155 (C.A.7th, 1957).

49 Id., at 159.

50 Ibid. This language was not before the Supreme Court which considered only the sufficiency of the indictment.

51 See text at 151 supra and cases cited at notes 38, 39 and 40 supra.


53 It is interesting to note, however, that Senator Langer has proposed an amendment which would limit the Hobbs Act to cases involving personal benefit. See 102 Cong. Rec. 6,456, 84th Cong. 2d Sess. (1956).
The Hobbs Act defines extortion to mean the obtaining of property from another with his consent induced by the wrongful use of actual or threatened force, violence or fear or under color of official right. Since both the Green and Kemble cases can be viewed as involving threats of physical violence, it might be suggested that an attempt to secure jobs by threat of strike is not “force, violence or fear” within the meaning of the statute. However, there is no question that the Hobbs Act applies to clear-cut cases of extortion where the threat of strike is used to exact a payoff for the personal benefit of a union official. It is not reasonable to believe that Congress intended that “force, violence or fear” should have a different meaning when applied to the featherbedding situation.

Another limitation, not inconsistent with the language of the Green and Kemble cases, might be based on the fact that the statute proscribes not the use of force but only its “wrongful” use. This would suggest that there are instances in which some measure of force may be used without violating the Act. Where the object sought is clearly unlawful, as in the case of a payoff to a union official, the use of coercion of a minimal character, like picketing or a strike, would certainly be sufficient to make the conduct criminal under the Act. However, where the unlawful character of the object sought is in doubt, as in the case of featherbedding where the absence of benefit to the employer is in dispute, Congress might reasonably have required that the means used be themselves unlawful for the consequences of the Hobbs Act to attach.

Under this view a strike to enforce featherbedding demands would not ipso facto violate the Act and would

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66 Section 302 of Taft-Hartley, 61 Stat. 157 (1947), 29 U.S.C.A. §186 (1952), makes it unlawful for an employer to pay money to a representative of his employees and unlawful for the representative to receive payments from the employer. Violation is a misdemeanor punishable by one year's imprisonment or a fine of $10,000 or both.
67 A similar argument, based upon the substitution of “force” in the Hobbs Act for “coercion” in the Copeland Act, must also be rejected. See U. of Pa. L. Rev., op. cit. supra note 55, at 1035-37.
68 Compare the law of criminal attempt which requires that defendant's actions more closely approach the commission of the substantive crime when it is a minor offense than when it is of a more serious nature. See Holmes, The Common Law 68-69.
do so only where threats of bodily harm or actual violence accompanied the featherbedding demands.

This construction, derived from the use of "wrongful" in the statute, supplies a possible limiting principle to guide the application of the Hobbs Act to featherbedding practices. However, it is completely unrealistic to make a conviction for felony turn upon the existence of incidental violence or threats in connection with otherwise legitimate labor activity. Under this view the typical picket line disturbance, if subsequently found to have been in connection with an attempt to impose services which are of little value to the employer, would be upgraded from a misdemeanor under state law to a felony.

The Green and Kemble cases involved attempts to impose additional workers on an employer as opposed to efforts to bring about the retention of present unwanted, superfluous and fictitious employees. This might suggest that the application of the Hobbs Act be limited to the former case. However, Congress has not made the application of any other labor legislation turn on such a distinction. Moreover, the application of this distinction would discriminate against workers who move from job to job, and there is no indication of congressional authorization of such discrimination.

Both the Green and Kemble cases explicitly make liability under the Hobbs Act for featherbedding turn on a finding that the services offered by the union are unwanted, superfluous and fictitious. This requirement would appear to limit the Act to cases where such services are found to be of no benefit to the employer. But assuming arguendo that Congress intended the Hobbs Act to apply to featherbedding, benefit to the employer would not be the test of liabil-

60 This might make an official whose union was pressing for a featherbedding demand the insurer of a peaceful strike on pain of conviction for a felony. See Staley's dissent in United States v. Kemble, 198 F.2d 889, 897 (C.A.3d, 1952).

Section 6 of Norris-LaGuardia, 47 Stat. 71 (1932), 29 U.S.C.A. §106 (1952), protects the union from vicarious liability for the actions of its members except where it has clearly authorized or ratified them. See United Brotherhood of Carpenters and Joiners of America v. United States, 330 U.S. 395 (1947). However, the possibility of a Hobbs Act conviction will certainly have a strong effect upon individual members through whom the union must act so that its activities are likely to be inhibited in spite of this section.

In United States v. Kemble, supra, the majority held that the evidence was insufficient to sustain the conviction of the union under the stringent requirements of this section. However, in United States v. Green, supra, the mass participation of the union members was held to be the equivalent of participation by the union.


62 This distinction is not to be confused with that suggested by Justice Jackson in dissent in NLRB v. Gamble Enterprises, Inc., 345 U.S. 117, 124 (1953), making the application of Section 8(b)(6) turn on whether the featherbedding practice "is . . . a continuation of an old usage that long practice has incorporated into the industry" or "a new expedient devised to perpetuate a union policy in the face of its congressional condemnation." Id., at 126. Jackson's distinction would seem to have no more basis in the Hobbs Act than in Section 8(b)(6). See Clark's dissent, id., at 126. Such a distinction might, however, be defended on grounds of policy. See Col. L. Rev., op. cit. supra note 19, at 1030-31.
ity. Featherbedding includes only those union practices which impair economic efficiency with the object of preserving the jobs of union members.\(^6^3\) It does not include demands which, though inconsistent with maximum efficiency, are reasonably related to health, safety and other legitimate concerns of labor organizations.\(^6^4\) Both may involve the imposition of services which are of little or no benefit to the employer.\(^6^5\) Therefore, the imposition of criminal sanctions on the basis of benefit to the employer would bring within the sweep of the Hobbs Act both featherbedding and union activity which is protected by other federal labor legislation.

If the assumption of the Court in the \textit{Green} case that the Hobbs Act covers featherbedding be adopted, it would be necessary to instruct the jury in a Hobbs Act prosecution that in order to convict it would not be sufficient that the offered services were of no benefit to the employer, but that the jury would have to be satisfied that the defendant sought to impose unwanted and superfluous services on the employer for the purpose of making work available and not for the purpose of improving working conditions.

The findings of fact required by such an instruction are highly complex. The relation of a union demand to legitimate labor objectives would vary from industry to industry and from job to job.\(^6^6\) The danger of penalizing desirable labor activity is great. It has already been seen that Congress thought it unwise to give the task of making this determination to the NLRB which, besides possessing expertise, would be quite sensitive to the problem of encroachment on legitimate labor activity.\(^6^7\) It is hardly plausible that Congress intended to put this issue to a common-law jury.

If liability under the Hobbs Act is made to turn on benefit to the employer or upon a finding that union demands are for the purpose of preserving jobs, not to improve working conditions, then what is not unlawful under Section 8(b)(6) of Taft-Hartley might, nevertheless, be a felony under the Hobbs Act. The desire to avoid the same anomaly of punishing conduct criminally which is protected by other labor legislation was the basis of the decision in \textit{United States v. Hutcheson}\(^6^8\) that the antitrust laws were inapplicable to labor activities. Moreover, if a peaceful strike for a featherbedding demand is held to violate the Hobbs Act, there would be the additional incongruity of permitting the punish-

\(^6^3\) See Slichter, op. cit. supra note 1.

\(^6^4\) This is made clear by the featherbedding cases arising under state antitrust laws where the test of liability is whether the demand is reasonably related to legitimate labor demands. See, e.g., Austin v. Painters' Dist. Council, 339 Mich. 462, 64 N.W.2d 550 (1954).

\(^6^5\) A good example of the legitimate imposition of unwanted services is the case where the union insists that more men be put on a job because of an employer's speedup.

\(^6^6\) See statement of Senator Taft at 152 supra.

\(^6^7\) Ibid.

\(^6^8\) 312 U.S. 219 (1941).
ment of protected activity under the Taft-Hartley Act which has been carefully guarded against even state injunctive powers.69

The preceding discussion would suggest that the Hobbs Act, contrary to the view apparently adopted in the Green and Kemble cases was not intended to and cannot be reasonably construed to apply to the forceful imposition of actual services upon an unwilling employer.70

IV

A more reasonable construction of the Hobbs Act would limit its application to cases involving the use of violence or a strike either to obtain a payoff to a union official for his own benefit or to obtain payment in the form of wages when no services are intended or are actually rendered for the employer.71

The jury would convict if it found that there was no bona fide intent to render services.72 If the jury found that there was an intent to render services, it would have to find further, in order to convict, that there was an intent to exact payment even if the proffered services were rejected. The jury would have to be carefully instructed on the requisite criminal intent to make clear that it was not asked to evaluate the benefit of the services to the employer nor to distinguish featherbedding from non-featherbedding demands. The reasonableness of the compensation demanded would not be relevant in finding a violation of the Hobbs Act so long as the demand was made on behalf of all the union's members.73 The pressure of public opinion and the realities of collective bargaining would prevent a union from making altogether unreasonable demands.


70 This appears to be the view of most commentators. See Aaron, op. cit. supra note 1; U. of Pa. L. Rev., op. cit. supra note 55. But compare 39 Va. L. Rev. 232 (1953).


72 Since the narrow holding of the Green case was to sustain the sufficiency of an indictment under the Hobbs Act charging the defendants with an attempt to impose "unwanted, superfluous and fictitious services," United States v. Green, 350 U.S. 415, 417 (1956), the case might be interpreted as consistent with this view on the ground that conviction required proof that the offer of services was in fact a sham. The Kemble case might similarly be held to be consistent on its facts with this view. See U. of Pa. L. Rev., op. cit. supra note 55, at 1041–42; 21 Geo. Wash. L. Rev. 798 (1953).

Under this view the same considerations would be relevant as were suggested by the Court in the Local 807 case: "An offer to work or even the actual performance of some services [does not] necessarily [entitle] one to immunity under [the Copeland Act]. A jury might of course find that such an offer or performance was no more than a sham to disguise an actual intention to extort and to blackmail. But the inquiry must nevertheless be directed to whether this was the purpose of the accused or whether they honestly intended to obtain a chance to work for a wage." United States v. Local 807, I.B.T., 315 U.S. 521, 534 (1942).

73 An extremely troublesome case would arise if union power were used to exact compensation which is too great to be attributable to normal wage differentials among jobs where the recipients of this compensation actually perform services. Consider, for example, the case where $1000 per day is demanded for the services of a particular hodcarrier. In most instances
Under the suggested interpretation no featherbedding violates the Hobbs Act except that which is an unfair labor practice under Section 8(b)(6) of the Taft-Hartley Act. Such a construction derives some support from Title II of the Hobbs Act which provides that the Act "shall not be construed to repeal, modify or affect (the Taft-Hartley Act)." Although Title II, on its face, would appear to require a construction of the Hobbs Act which would exempt activities which are protected by other labor legislation, the imposition of criminal penalties on any aspect of labor relations necessarily "affects" and may inhibit protected activity. Title II cannot, therefore, be considered determinative of the issue.

It might appear naive to suggest that the law require a man to engage in unproductive activity for what are essentially unearned wages rather than allow him to collect his pay and spend his time more profitably. However, such a requirement avoids opening the door to multiple demands. It is not, therefore, unreasonable for Congress to have brought such activity within the scope of the anti-racketeering statute.

Of course, such a restrictive interpretation of the Hobbs Act renders it ineffective as a weapon against featherbedding practices. But this criminal statute appears to be an inappropriate vehicle for this purpose and was probably not such a demand would probably be an indirect way of obtaining money for the personal benefit of a union official. If it could be shown that a union official received the money or that the union benefited so that the persons receiving the money could be considered "representatives" of the union, there would probably be a violation of Section 302 of Taft-Hartley, 61 Stat. 157 (1947), 29 U.S.C.A. §186 (1952). See note 56 supra.

Because Section 302 would probably cover this situation and because it would be difficult to prescribe standards by which a jury could determine when compensation is so unrelated to legitimate collective bargaining as to indicate an intent to extort, it is arguable that this should not be considered a violation of the Hobbs Act. On the other hand, it might be thought unreasonable to require an acquittal in every case where services are actually rendered regardless of the compensation sought. Consider the example posed above.

The case in which excessive compensation is demanded for services actually rendered has not yet come up under Section 8(b)(6) and to this extent liability may not be co-extensive. In any event, the excessive compensation case does not involve featherbedding activity.

Earlier it was argued that a strike for a featherbedding demand might not be unlawful under the Hobbs Act in the absence of violence. Here too it might be argued that the law should require that the means used to enforce a featherbedding demand which is an unfair labor practice also be unlawful. However, unlike the former case, there is relatively little doubt as to the wrongful nature of the object sought, so that there is no basis for distinguishing this situation from the clear-cut case of extortion.


The helpers in the Local 807 case would be strongly tempted to exact a second day's wages if they were not required to occupy their time in the trip through the city.

See United States v. McGlone, 19 F.Supp. 285 (E.D. Pa., 1937), discussing the activity at which the racketeering act was aimed.
intended by Congress to control featherbedding. If Congress wants to control featherbedding it would seem that the NLRB would be best suited to the task. If, on the other hand, it is Congress’ concern to control labor violence, there would seem to be little justification for singling out violence associated with featherbedding demands. In any event, the preservation of the peace has traditionally been a matter of state concern and might well be left to the states.


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STATE IMMUNITY STATUTES AND THE SCOPE OF THE PRIVILEGE AGAINST SELF-INCrimINATION

In Knapp v. Schweitzer, the Supreme Court decided that a witness appearing in a state proceeding under a grant of immunity against possible self-incrimination is not privileged by the Fifth Amendment to decline to answer questions on the ground of his reasonable apprehension of subsequent federal prosecution. Accordingly, the Court sustained a New York contempt citation based on Knapp’s failure to reply to questions posed in the New York proceeding. The impact of the Knapp case can be understood only in the light of related precedents. It has been held that a state immunity statute which does not protect the witness against prosecution in another jurisdiction for the matters to which the questions relate does not violate the Due Process Clause of the Fourteenth Amendment and that the transcript of the witness’ state testimony may be introduced against him in a federal prosecution without violating the Fifth Amendment privilege against self-incrimination, unless there was “collusion” between the two sovereigns. These holdings, together with the Knapp case, may place the state witness in an almost intolerable position. He may be faced with a choice between a state contempt citation if he refuses to answer, a state perjury conviction if he answers untruthfully, and a federal prosecution if he answers truthfully. The harshness of this possible result has caused sharp divi-


5 Since the analysis will not be affected thereby, this comment will assume that the witness has sound reason to fear subsequent prosecution. Although the Supreme Court, in its first enunciation of the rule that a state immunity grant need not protect the witness against