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RECORD

IN THE COURT OF COMMON PLEAS
OF BLAIR COUNTY

No. 1915 in Equity

Logan Valley Plaza, Inc. and Weis Markets, Inc.,
Plaintiffs

vs.

Amalgamated Food Employees Union, Local 590,
AFL-CIO, Penn Center Blvd., Pittsburgh, Pennsyl-
vania, and John Doe and Richard Roe, Said Names
Being Fictitious, True Names Unknown, Said Per-
sons Being Officers, Employees, Agents, Servants
and Pickets Employed by Defendant Union, and
Any Other Individuals, Labor Unions or Labor
Organizations Acting in Concert,
Defendants

I.

RELEVANT DOCKET ENTRIES

Complaint In Equity filed December 27th, 1965.

Dec. 27th, 1965, Plaintiff's Bond in the sum of \$500.-
00 filed. And Now December 27th, 1965, the

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within Bond having been presented is, upon motion of John Woodcock, Jr., approved. By the Court, John M. Klepser, P.J.

Order

And Now, this 27th day of December, A.D. 1965, the plaintiff having filed a Complaint in Equity, together with injunction affidavits, and an injunction bond in the amount of Five Hundred Dollars (\$500.00) which is hereby approved as required by law, it is Ordered and Decreed that a preliminary injunction shall issue as follows until further hearing on this matter:

The defendants, individually and collectively, the members of the defendant unions, their officers, representatives, servants, agents, employees and those working in concert with them, are enjoined from doing the following acts or any of them;

(a) Picketing and trespassing upon the private property of the plaintiff Weis Markets, Inc. Store No. 40, located at Logan Valley Mall, Altoona, Pennsylvania, including as such private property the store room, porch and parcel pick-up area.

(b) Picketing and trespassing upon the private property of plaintiff Logan Valley Plaza, Inc. located at Logan Valley Mall, including parking area and all entrances and exits leading to said parking area.

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(c) Picketing at one time by more than ——— pickets but in no event may pickets block in any manner entrances or exit areas to premises of both of the plaintiffs.

(d) Physically interfering with or preventing plaintiff Weis Markets, Inc. customers and delivery men and suppliers from entering or leaving plaintiff Weis Markets, Inc. store and parking area.

(e) Assaulting, threatening to assault or injure, or making insulting and threatening remarks, or injuring any of the plaintiff Weis Markets, Inc. employees, customers and delivery men and suppliers.

(f) Physically interfering with or preventing the plaintiffs employees from performing their duties as employees of the plaintiffs.

The 31 day of December, A.D. 1965, at 10 a.m. in Court Room No. 1, Blair County, Pennsylvania, is fixed as the time and place of hearing of plaintiffs' motion to continue the injunction.

By the Court,
John M. Klepser,
P. J.

Jan. 4, 1966, Motion to dissolve or modify preliminary injunction filed.

January 4, 1966, Testimony taken.

Feb. 14, 1966, Testimony taken January 4th, 1966 filed.

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February 14, 1966, Opinion filed, with the following Order thereon:

Order

And Now, this 14th day of February, A.D. 1966, after hearing on the preliminary injunction heretofore issued in the above-captioned matter, at which hearing the defendant union was represented by counsel, and upon consideration of the testimony and exhibits adduced at said hearing, it is Ordered, Adjudged and Decreed that: (a) the defense motion to dissolve or modify said preliminary injunction be and the same is hereby denied and dismissed, and

(b) said preliminary injunction is hereby continued until further adjudication of this case or until further order of this Court, the security heretofore entered by the plaintiffs also to be continued.

By the Court,
(s) John M. Klepser,
P. J.

March 28, 1966, Affidavit of Service of Notice To Taking of an Appeal filed by John R. Strawmire, Esq., Attorney for Appellant, as follows:

March 28, 1966, Notice to Honorable John M. Klepser, President Judge of Blair County, that an appeal is taken to the Supreme Court, filed.

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March 28, 1966, Notice to Stenographer, Court of Common Pleas, that an appeal to Supreme Court is taken, filed.

March 28, 1966, Notice to John Woodcock, Esq., and Sidney Apfelbaum, Esq., Attorneys for appellee, that an appeal to Supreme Court is taken, filed.

March 21, 1967, Majority and dissenting opinions of the Supreme Court of Pennsylvania and judgment filed.

Complaint

II.

COMPLAINT

To the Honorable, the Judges of Said Court:

Logan Valley Plaza, Inc. and Weis Markets, Inc., Plaintiffs above named, complain of the Defendants and say:

1. Logan Valley Plaza, Inc., one of the plaintiffs is a corporation duly organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania, engaged in the conduct of business for the purpose of construction, ownership and leasing retail storerooms and parking areas for vehicles of customers and business invitees of tenants, and having its principal place of business at 422 Lincoln Street, Johnstown, Cambria County, Pennsylvania.

2. Weis Markets, Inc. one of the plaintiffs is a corporation duly organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania, engaged in the sale of food and sundry household articles, employing approximately two thousand two hundred persons in its business, and having its principal place of business at 1000 South Second Street, Sunbury, Pennsylvania.

3. The Defendant, Local Union No. 590, Pittsburgh, Pennsylvania of the Amalgamated Food Employees Union, AFL-CIO (hereinafter referred to

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as the "Union"), is an unincorporated labor organization, with its principal office located at 201 Penn Center Boulevard, Pittsburgh, Pennsylvania.

4. The Defendants, "John Doe" and "Richard Roe", first and last names fictitious, true first and last names unknown to the Plaintiff, are officers, employees, agents and servants of the Defendant union and/or are employed by the Defendant Union, and upon information and belief the said Defendants have picketed and engaged in unlawful acts hereinafter stated and will continue to picket and engage in said unlawful acts at the behest of the Defendant Union and at the direction of the Defendant's officers and agents and with full knowledge, acquiescence and consent of said Defendant Union.

5. In addition to the aforesaid Defendants, there are, engaged by and acting for and on the behalf of and for the benefit of and at the instance and direction of the Defendants named herein, certain and various other persons whom both of the Plaintiffs are presently unable to identify by name, and who have been and who are presently participating in the acts and course of conduct hereinafter complained in conjunction, concert, and conspiracy with the aforesaid Defendants.

Plaintiffs are without knowledge and without means to ascertain the precise number or the identities of the members of the Defendant Union or of the precise identity or number of the other labor organizations and unions and the individuals, agents

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and officers thereof acting in concert with the Defendant Union, and it is, therefore, impossible to name them as party defendants in this suit.

6. Commencing December 17, 1965, the Defendants, through their officers, servants, agents and employees, as well as employees of A. & P. Supermarkets and others, have conspired and combined unlawfully to interfere with the Plaintiffs' businesses by engaging in the following unlawful acts and conduct at a certain supermarket owned by Weis and opened for business December 8, 1965, said Weis Supermarket being located at and surrounded by the property of the other plaintiff known as Logan Valley Plaza, Inc., Altoona, Pennsylvania, all of which more clearly appear in the affidavits attached hereto.

(a) They have caused large number of persons to congregate in front of and about the entrances of the Weis Markets, Inc. store restricting said Plaintiff's employes, customers and other persons having lawful business therein, from entering or leaving said Plaintiff Corporation's premises.

(b) They have caused large numbers of persons to congregate in front of and about the parking and customer loading areas of the Weis Markets, Inc. store, thereby interfering with and restricting said Plaintiff's employees, customers and other persons having lawful business therein from parking their vehicles and entering and leaving said plaintiff's parcel pick-up zone.

Complaint

7. Upon information and belief that the persons who have been and who are presently participating in the acts and course of unlawful conduct complained of are officers, servants, agents and employees of the Defendant, and are comprised of employees of the A. & P. supermarket and others on Plank Road, Altoona, Pennsylvania, competitors of Weis Markets, Inc., one of the Plaintiffs, the purpose of such unlawful conduct being to disrupt and interfere with said Plaintiff's business, resulting in the loss of good will of said Plaintiff's customers and a reduction of sales, all to the unlawful and unfair competitive advantage of A. & P. supermarket on Plank Road, Altoona, Pennsylvania, and others.

8. Plaintiff is the owner-occupant of property located at the Logan Valley Plaza, Altoona, Pennsylvania, comprising a store proper, a porch across the front thereof and certain defined portions of the parking lot parcel pick-up area as well as record-grantee by virtue of certain documents of title in the form of reciprocal easements and privileges related to parking areas owned by plaintiff Logan Valley Plaza, Inc.

9. Along one side of these premises there is a public thoroughfare known as Plank Road which contains a wide developed and level berm; along another side of these premises is a public thoroughfare known as Goods Lane which contains a wide developed and level berm.

10. Both of the Plaintiffs have informed the Defendants that they are to cease trespassing on

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the porch parcel pick-up areas and parking lot and have advised them to remove themselves to the berm on the public thoroughfare where they may engage in reasonable, orderly and lawful picketing.

11. Plaintiff, Weis Markets, Inc., has caused notice in writing to be posted upon its premises specifically advising that there be no trespassing by persons other than Weis employees upon the property and premises of the Plaintiff, Weis Markets, Inc.

12. Notwithstanding said notice to desist, Defendants have persisted and still do persist in committing the foregoing acts of trespass.

13. Upon information and belief Plaintiffs aver that the Defendants intend to continue with their illegal trespassing notwithstanding there are well-developed berms on public thoroughfares available on two sides of Plaintiffs' premises which may be used by said Defendants for reasonable, orderly and lawful picketing.

14. By virtue of the aforesaid unlawful picketing and trespass Defendants have seized Plaintiffs' property and deprived them of its use.

15. By reason of the Defendants' unlawful acts, the Plaintiffs have suffered and will continue to suffer great and irreparable damages, though the amounts of which cannot now be definitely ascertained, in respect to the following, among other things:

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(a) Property of both of the plaintiffs will be further harmed or destroyed.

(b) The supermarket business of one of the plaintiffs, Weis Markets, Inc., will continue to be disrupted and said Plaintiff will be unable to adequately supply the needs of its customers, and said Plaintiff will therefore lose the good will of its customers.

(c) Competitors of Plaintiff Weis Markets, Inc., namely, the A & P supermarket and others on Plank Road, located only one-half mile from said Plaintiff's premises, and drawing its customers from the same customer area as said Plaintiff, will gain an unjust and unlawful business advantage by virtue of the unlawful activities of its employees, agents and servants.

(d) Weis Markets, Inc., one of the Plaintiffs will lose great sums of money, the amounts of which will not be definitely ascertainable, due to its inability to continue its business by reason of the Defendants' unlawful interference with said business.

(e) Logan Valley Plaza, Inc., one of the Plaintiffs will lose great sums of money, the amounts of which will not be definitely ascertainable, due to its inability to peacefully conduct and continue its business of construction and rental of buildings as well as furnishing of parking areas for vehicles free from interference of trespassers who are unlawfully interrupting the peaceful conduct of business.

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16. There is not presently and there never has been a labor dispute between Plaintiff Weis Markets, Inc., and the Defendant Union.

17. The Plaintiffs have no adequate remedy at law, and will suffer irreparable loss and damage unless Defendants be preliminarily until hearing and thereafter perpetually enjoined as is more fully hereinafter set forth.

Wherefore, Plaintiffs pray your Honorable Court for the following relief:

1. That your Honorable Court enter a decree preliminarily until hearing and thereafter perpetually enjoining the Defendants individually and collectively, the members of Defendant Union, their officers, representatives, servants, agents and employees, and any other person or persons acting in concert with them or otherwise participating in their aid, from doing the following acts or any of them:

(a) Picketing and trespassing on the premises of the Plaintiff Weis Markets, Inc., and also the premises of Logan Valley Plaza, Inc., also plaintiff herein, in Altoona, Pennsylvania.

(b) Picketing by more than two persons on each of the berms on the public thoroughfares adjoining the Plaintiffs' premises.

(c) Physically interfering with or preventing the customers of Plaintiff Weis Markets, Inc., from entering or leaving the said Plaintiff's store.

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Injunction Affidavit*

(d) Physically interfering with or preventing the customers of Weis Markets, Inc., from entering or leaving the customer loading area or parking lot adjacent to the store of Plaintiff Weis Markets, Inc.

(e) Trespassing upon the property of Plaintiff Logan Valley Plaza, Inc.

2. That the Defendants pay the costs of these proceedings.

3. Such other and further relief, including pecuniary damages, as your Honorable Court may deem just and proper.

And your Plaintiffs will ever pray, etc.

Sidney Apfelbaum,
Robert Lewis,
Norman Krumenacher,
John Woodcock,
Attorneys for Plaintiffs.

Commonwealth of Pennsylvania,
County of Northumberland, ss:

Micheal C. Rheam, being duly sworn according to law, deposes and says that he is the Vice-President and Secretary of Weis Markets, Inc., the within plaintiff, and that he is authorized to make this affidavit on behalf of the plaintiff corporation; that these facts within his knowledge set forth in the foregoing complaint are true and correct and that those facts not within his personal knowledge he

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Injunction Affidavit*

On the evening of December 21, 1965, which was a Tuesday night.

I was working when I saw one of the men who had been on the picket line, and he was then inside the Weis store talking to a customer.

Kenneth Bartlett

—

(Jurat)

—

*County of Northumberland,
State of Pennsylvania, ss:*

My name is Alex T. Baceski, and I work for Weis Markets, Inc.

At approximately 6:40 p.m., on December 22, 1965, I observed a man who had been on the picket line carrying a card, and when I observed him he was inside the Altoona Weis store. He was halfway down the produce aisle, and headed further into the store. He had no sign on at this time.

I went up to him and asked, "Haven't I seen you on the picket line?" He said, "Have you?" I said, "Yes, I have. You are not welcome in here."

He said, "Can't I even see the store?" I repeated, "you are not welcome here."

He walked out to the porch of our store and then to the pick-up zone, and I observed him secure a sign from another picket who was carrying a couple

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Injunction Affidavit*

of signs, put one on, and started to walk as a picket in front of the store.

Alex T. Baceski

(Jurat)

*Commonwealth of Pennsylvania,
County of Northumberland, ss:*

Fred Basehore, being duly sworn deposes and says:

I reside at R D No. 2, Lewisburg, Pennsylvania. I am the Assistant General Superintendent for Weis Markets. I was at the Weis Supermarket in Altoona, Pennsylvania the week of December 13-17, 1965 to supervise that store's opening operations. On Friday night, December 17, 1965, a group of men commenced picketing in the area directly in front of the entrances to the store, more particularly in the customer loading area immediately adjacent to the store's porch. There were between 4 and 7 pickets walking at all times. The pickets were wearing signs which read "Weis Markets is non-union. These employees are not receiving union wages or other benefits. Amalgamated Food Employees Union Local 590." At approximately 8:00 p.m. a person, later, identified to me as Charles Toth, a union organizer, arrived on the scene. I was told by one of Weis' suppliers that Mr. Toth was a former A & P meat manager.

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Injunction Affidavit*

Between 8 and 9:00 p.m. there was a great deal of confusion and congestion at the area where the pickets were walking. Since the pickets were in the customer loading area, customer cars could not pull into the area at normal speed, nor could they leave until they had been delayed for some time. As a result, cars and customers were lined up by the loading area awaiting service. At approximately 9:00 a car pulled into the customer loading area. The occupant of the vehicle began talking to Toth. One of the pick-up boys came into the store and told me that this car was blocking the customers from entering or leaving the pick-up area, and that car loading was at a standstill. The pick-up boy told me that the occupant of the car was the store manager of the A & P store on Plank Road. I immediately went outside and approached the car. I told the occupant to move his vehicle out of the pick-up area. He replied, in a rough and abrasive manner, "Are you telling me, or asking me". I replied, "If that's the way you want it, I'm asking you, will you please move your car up out of the way". At that time I had brushed the arm of Mr. Toth. He immediately yelled at me, in a threatening manner, "Don't you touch me," I replied, "What did you say," He repeated the warning, "Don't you ever touch me." The car then pulled away, and I walked back into the store.

On Saturday, December 18, 1965, the pickets arrived at approximately 10:00 a.m. At 10:50 I was told that one of the pickets worked at the Plank

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Injunction Affidavit*

Road A & P. Later in the day, I was told by a customer that at least 3 of the 4 pickets then present were employed at the Plank Road A & P.

As was the situation on December 17, the flow of traffic to and from the pick-up area was hindered because of the activities of the pickets in this area. Customers had to wait until the pickets got out of the way before they could move their cars into the loading area and once loaded had to wait and avoid the pickets in order to leave.

On Monday, December 20, 1965, the pickets arrived at approximately 6:00 p.m. The traffic situation at the loading area became congested as it had been on Friday and Saturday. The pickets walked two and three abreast, and cars could not pass until they had moved away. As a result, I noticed on two occasions within a five minute period that three cars had to wait to park their cars in the parking area near the pick-up area. By 7:15, the number of pickets had increased to ten, and they were wandering in and out of the pick-up area to within two feet of the porch.

At that point a boy in the pick-up zone was told by a picket that they are going to run us out of town. At about 6:05 p.m. I left the store and approached one of the pickets. I asked him whether he intended to picket tonight. He replied, "yes". I told him that he was picketing in our parking lot, and if he wanted to picket that he should go out to the berm. The man replied that he thought this was

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Crown's parking lot. I told him that this was our parking lot. He then asked where our lot ends. I told him the entire lot was ours, right out to the berm, and that he should picket there if he intended to continue picketing.

On December 21, 1965, the pickets arrived at approximately 10:30 a.m. At 10:30 a.m. the pickets stopped and talked to a customer who was about to enter the store. At about 10:35 the meat manager of an A & P store approached the pickets, and they engaged in a conversation. The manager then came into store and comparison shopped our meat prices. All the pickets at this time were from the A & P on Plank Road.

At about 2:00 the pickets were joined by four girls wearing signs. The girls picketed on the loading porch by the entrances to the store. Later they proceeded to walk four abreast in the pick-up zone, effectively blocking the flow of traffic in and out of that area.

I have read the above and it is true to the best of my knowledge and belief.

Fred Basehore

(Jurat)

ORDER

And Now, this 27 day of December, A.D. 1965, the plaintiff having filed a Complaint In Equity, to-

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Order*

gether with injunction affidavits, and an injunction bond in the amount of Five Hundred Dollars (\$500.00) which is hereby approved as required by law, it is Ordered and Decreed that a preliminary injunction shall issue as follows until further hearing on this matter:

The defendants, individually and collectively, the members of the defendant unions, their officers, representatives, servants, agents, employees and those working in concert with them, are enjoined from doing the following acts or any of them:

(a) Picketing and trespassing upon the private property of the plaintiff Weis Markets, Inc., Store No. 40, located at Logan Valley Mall, Altoona, Pennsylvania, including as such private property the storeroom, porch and parcel pick-up area.

(b) Picketing and trespassing upon the private property of plaintiff Logan Valley Plaza, Inc. located at Logan Valley Mall, including parking area and all entrances and exits leading to said parking area.

(c) Picketing at one time by more than ——— pickets but in no event may pickets block in any manner entrances or exit areas to premises of both of the plaintiffs.

(d) Physically interfering with or preventing plaintiff Weis Markets, Inc. customers and delivery men and suppliers from entering or

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leaving plaintiff Weis Markets, Inc. store and parking area.

(e) Assaulting, threatening to assault or injure, or making insulting and threatening remarks, or injuring any of the plaintiff Weis Markets, Inc. employees, customers and delivery men and suppliers.

(f) Physically interfering with or preventing the plaintiffs employees from performing their duties as employees of the plaintiffs.

The 31 day of December, A.D. 1965, at 10 a.m., in Court Room No. 1, Blair County, Pennsylvania, is fixed as the time and place of hearing of plaintiffs' motion to continue the injunction.

By the Court:
John M. Klepser,
P. J.

*Motion To Dissolve or Modify Preliminary
Injunction*

III.

MOTION TO DISSOLVE OR MODIFY
PRELIMINARY INJUNCTION

*To John M. Klepser, President Judge of Said
Court:*

And now, this 4th day of January, 1966, the defendant, by its attorney, John R. Strawmire, Esquire, moves the Court to dissolve the Preliminary Injunction formerly entered in this case or to modify it for the following reasons:

1.

That the matter here in question grows out of a labor dispute as defined by the "Labor Anti-Injunction Act" Act of June 2, 1937, P. L. 1198 §§1, 2 and 3. The labor dispute here involved is a controversy concerning the terms and conditions of employment for the employees of the plaintiff, Weis Markets, Inc. at their Store No. 40 located at Logan Valley Mall, Altoona, Pennsylvania. That constituting such a labor dispute within the terms of said Act, your Honorable Court is without jurisdiction to issue any restraining order or temporary or permanent injunction relating to said labor dispute.

2.

That the activity here complained of amounts to nothing more than peaceful, informational

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Injunction*

picketing by Union Members for the purpose of informing the public of the terms and conditions of employment of the employees of Weis Markets, Inc. at said store and as such, is constitutionally protected by the Labor Anti-Injunction Act and should not be enjoined.

3.

That said conduct is not calculated to coerce the plaintiff-employer to compel his employees to prefer or become members of the defendant-union.

4.

That such conduct is not unlawful picketing or mass picketing or amounting to a seizure within the meaning and construction of the Labor Anti-Injunction Act.

5.

That the requirements of equitable jurisdiction have not been shown in that the plaintiffs have failed to show that immediate and irreparable injury would be sustained to it before notice could be given to the defendant or a hearing held on the matter. That such immediate and irreparable injury means immediate, injurious consequence to the plaintiffs that cannot be repaired under any standard of compensation. That such peaceful and lawful picketing as here engaged in by the defendant should not be enjoined merely because of an economic loss to the plaintiff-employer may result therefrom. That said economic loss is com-

*Motion To Dissolve or Modify Preliminary
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pletely compensable in money damages and as such, a complete and adequate remedy at law exists for the plaintiffs to rely upon. That the area whereon the defendant was conducting a peaceful and lawful picketing is a shopping center, pedestrian and parking area and as such, constitutes quasi-public property even though privately owned. Such quasi-public property under Pennsylvania Law is a proper situs for peaceful picketing and as such, the normal rules governing trespass actions do not apply.

6.

That the defendant has not caused large numbers of persons to congregate in front of and about the entrances of Weis Markets, Inc. nor has the defendant been guilty of any unlawful act as defined by the Labor Anti-Injunction Act.

7.

That by granting the relief of a Preliminary Injunction without notice or hearing, greater injury is now being inflicted upon the defendant by the granting of said relief than would have been inflicted upon the plaintiffs by the refusal of said relief in that the defendant's ability to inform the public has been impaired and harmed by the ability of the plaintiffs to obtain Preliminary Injunction without notice or hearing based upon the improper, inaccurate, false and misleading affidavits. In being required to picket on public property at the entrances to the shopping center area, the pickets

*Motion To Dissolve or Modify Preliminary
Injunction*

are required to stand on the berm of heavily traveled roads which creates an extremely dangerous situation for them and further, their picketing indirectly affects other tenants of the Logan Valley Plaza, Inc. Shopping Center which in no way is desired by the defendant. Said injury is substantial and irreparable for which there can be no adequate remedy.

8.

That said Preliminary Injunction Order as issued is improper for the reason that it fails to provide any restraints upon the plaintiffs to prevent them from retaliation in any form against those employees who have participated or will participate with the defendant actively or passively in their peaceful and lawful picketing.

9.

That said Preliminary Injunction Order as issued is improper for the reason that said Order in no way prevents or enjoins the plaintiffs or its employees from any acts of threats of violence, intimidation, coercion, molestation, libel or slander against the defendant.

10.

That by reason of the foregoing, said Preliminary Injunction Order does not preserve the status quo as is required by equity but rather gives to the plaintiffs an unwarranted and unreasonable advantage in this current labor dispute.

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Injunction*

11.

That by reason of the Labor Management Relations Act, 29 USCA §§141 et seq., your Honorable Court is without jurisdiction in this labor dispute whatsoever in that said Act by providing a method and remedy of correcting an unfair labor practice has removed this type of labor dispute from the sphere of state action and thereby precludes your Honorable Court from entering any decree whatsoever in this matter.

Wherefore, the defendant respectfully prays your Honorable Court to forthwith dissolve the Preliminary Injunction heretofore issued in this matter or in the alternative to modify said Order so as to more adequately maintain the status quo between the parties and further, that the defendant be allowed to peacefully picket on the property of the plaintiff, Logan Valley Plaza, Inc., it being quasi-public property. In addition thereto, the defendant respectfully prays your Honorable Court, if said Preliminary Injunction is modified and continued, that said Injunction Bond as heretofore filed by the plaintiffs be ordered increased to the sum of Five Thousand (\$5000) Dollars.

John R. Strawmire,
Attorney for Defendant.

(Affidavit)

Fred Basehore—Direct

IV.

THE EVIDENCE

John M. Klepser, President Judge.

John Woodcock, Esquire, Counsel for Logan Valley Plaza, Inc.

Robert Lewis, Esquire, Counsel for Weis Markets, Inc.

John R. Strawmire, Esquire, Counsel for Defendants.

Transcript of Testimony taken January 4, 1966.

MR. WOODCOCK: If your Honor please, I move that Robert Lewis, Esquire, a member of the New York Bar, be admitted specially for the trial of this case.

THE COURT: Motion is granted.

MR. FRED BASEHORE, after having been duly sworn according to law was examined as follows:

Direct Examination

BY MR. LEWIS:

Q. What is your full name?

A. Fred Basehore.

Fred Basehore—Direct

Q. By whom are you employed?

A. Weis Markets.

Q. What is your position?

A. Assistant General Superintendent for the Northern Division.

Q. What are your duties?

A. I oversee the entire operation for Weis Markets in these particular markets.

Q. Do you know on what date a store was opened to the public for the first time in Altoona?

A. Yes, December 8th.

Q. Where is this store located?

A. On Logan Valley Boulevard.

Q. On December 8th of what year?

A. 1965.

Q. What is the street address of that store, do you know?

A. Plank Road, Logan Valley Mall.

Q. Were you present at this store on the evening of December 17, 1965?

A. I was.

Q. Did anything unusual happen at that time?

A. Yes, shortly after six o'clock I noticed four gentlemen appeared wearing signs.

Q. How long did they remain there?

A. Until closing time.

Q. What time is closing time?

A. That is 10:00 o'clock.

Q. 10:00 o'clock p.m.?

A. Yes.

Q. Do you recall the wording on these signs?

Fred Basehore—Direct

A. Yes. "Weis Markets is non-union. These employees are not receiving union wages or benefits. Amalgamated Food Clerks Union, Local 590."

Q. Approximately where were they standing with relation to the store?

A. In our parcel pick-up zone, which is approximately 5 feet from the porch.

Q. What is the parcel pick-up zone used for?

A. We use it strictly for customers to come and enter to pick up their parcels which they had purchased.

Q. Do they come in any vehicle?

A. Oh yes.

Q. They drive in?

A. They drive in to this particular area, and there the groceries are loaded into the cars by our boys on what we call pick-up duty.

Q. Is this area marked in any way?

A. It sure is. Very plainly marked.

Q. What does it say?

A. "Parcel pick-up." And it has a bold double line right down there.

Q. On the night of December 17th were the pickets walking in this vicinity?

A. They were.

Q. Were the cars moving in this vicinity?

A. Yes.

Q. Sporadically or continuously, or how often?

A. Mostly continuously as it was a Friday night, which is quite busy.

Q. Did you observe what occurred at this time?

A. I did.

Fred Basehore—Direct

Q. Where were you standing?

A. I was inside the store as well as out. I was right out on the porch with the boys helping to unload because there was quite a congestion.

Q. All right then, how far away from the pickets were you at this time?

A. Oh, at this time it might have been 5, 6 feet.

Q. How far away from the parcel pick-up zone were you?

A. I was right up to it, I was right at the edge of the porch.

Q. Will you describe what happened, that is, on the evening of December 17th?

A. Yes. These pickets arrived and naturally caused quite a concern on my part as it was causing congestion out there and customers were milling around trying to get in as well as leave. After they had the groceries loaded in the car they had a problem of waiting until some of the pickets stepped out of the way that they could leave the zone. Then I recall another incident around nine o'clock when I was in the store and one of the boys came out and said, "Our pick-up zone is completely halted." And I said, "It is, what is the trouble?" As I was going out the door to check on this incident the boys said, "It is the Manager from the A & P, he is parked in our pick-up zone." And he was parked in a position that the cars couldn't enter or leave. So I went over to the man, and I said to him, "Will you move your car out of the way?" And he very sharply turned to me and says: "Are you asking me or telling me?" I said, "If this is

Fred Baschore—Direct

the way you want it I am asking you, will you please move your car out of the way?" It was causing quite a congestion so the gentleman did move.

Q. Now when cars enter your pick-up zone do you know what rate of speed they are traveling?

A. No, I wouldn't be able to tell you in miles per hour what rate of speed. No I wouldn't be able to answer that.

Q. Would you be able to answer whether cars entering the pick-up zone travel at approximately the same rate of speed as cars entering the parking lot itself on the main road?

A. Yes, I would say that, as they come around the corner from Sears they would, yes, sir.

Q. What is your answer?

A. I would say the same rate of speed as they enter our entrance out at the berm, out at the highway.

Q. It would be the same rate of speed as they enter?

A. (Interposing) As they would come around the corner into the pick-up zone, yes.

Q. You refer to the Manager of an A & P Supermarket, what A & P Supermarket is this?

A. That is the one on Plank Road about a half mile from the store.

Q. Has this picketing that you have ascribed as occurring on December 17th continued after the 17th?

A. It has.

Q. To what time?

A. They didn't picket the day before Christmas but then they came back the following week.

Fred Basehore—Direct

Q. Did they picket up until the time that the court issued an injunction in this matter?

A. They did, with the exception of the day before Christmas.

Q. And then where did the picketing occur after the injunction was issued?

A. Out on the berm.

Q. Have there always been 4 pickets?

A. It has varied.

Q. From what number?

A. Very seldom less than 4, but we have had as high as 13 I recall on the night of December 21st, a Tuesday night.

Q. Where were these 13 people picketing?

A. On our parcel pick-up area.

Q. Were they marching single file or abreast of each other?

A. They were marching abreast.

Q. How many were abreast?

A. Two, and sometimes they would go into 3 or 4.

Q. How close did they come to the porch?

A. As close as 2 feet.

Q. Were they ever on the porch itself?

A. There were occasions when they had stepped up on the porch. There was a couple girls on the day of the 21st, in the afternoon, they stepped up on the porch.

Q. Have you ever spoken to the pickets?

A. Yes, on one occasion, on Monday night, December 20th. Shortly after six o'clock I saw the pickets arrive, I walked up and approached the one gentleman who I thought was in charge of them,

Fred Basehore—Direct

and I said to him, "Do you intend to picket here?" He answered he was or he had intended to. I said to him, "Do you know you are picketing on private property?" And he said, "No, this belongs to Crown Construction." I said to him, "No, this property belongs to Weis Markets." He said, "Where does Weis Market's property end?" So I said, "Out along the highway right at the edge of the macadam." And I said, "If you want to picket do your picketing out there." And I immediately turned and left, I said no more and nothing was said to me.

Q. What did he do if anything?

A. They continued their picketing.

Q. Do you have a Sign posted on your property prohibiting picketing?

A. Yes.

Q. Or trespassing?

A. Yes.

Q. What does the Sign read?

A. "No trespassing or soliciting is allowed on Weis Market porch or parking lot by any one except Weis employees without the consent of the management."

Q. Do you know who is the property owner of the store proper itself?

A. Yes, Weis Markets.

Q. And the porch?

A. Weis Markets.

Q. And the parcel pick-up zone?

A. Weis Markets.

Q. And the parking lot?

A. Weis Markets.

Fred Basehore—Direct

Q. Now where is this Sign posted that you referred to previously?

A. Right between the entrance and the exit doors.

Q. When was it posted?

A. Just a few days after the opening.

Q. Which was when? December 8th?

A. December 8th when we opened. So it was a few days after that.

Q. Are you familiar with the property around the area of the store?

A. I am.

Q. I show you Petitioner's Exhibit No. 1 for identification and ask you if you would describe this property? What does it show?

A. It shows our parking lot to the west side and our store with two entrances on the west side. Now this is from Plank Road looking, I would say, North.

MR. STRAWMIRE: For clarification, to the left is Good's Lane?

A. That is correct.

Q. Anything else?

A. No, other than the two entrances here.

Q. All right, now referring to the two entrances would you identify them? What would be Entrance No. 1?

A. Back where you see a station wagon, it is a white top with dark bottom, that would be Entrance No. 1, and Entrance No. 2 would be this way (pointing). It looks like a jeep truck or something parked along the side, that is Entrance No. 2 off of Good's Lane.

Fred Basehore—Direct

Q. What would you say the distance was between the store itself and those two entrances?

A. About 350 feet.

Q. Did you mark them off, the feet?

A. Yes, I did.

Q. When did you mark them off?

A. I did this morning.

Q. I show you Exhibit No. 2 for identification and ask you to describe what that shows?

A. That is Entrance No. 1 off of Good's Lane, the same one as I identified before with that station wagon which I thought was a complete white top but it has white trim, and it shows our entranceway.

Q. What is the width of that entranceway?

A. Approximately 20 feet.

Q. Does it show any berm?

A. Yes.

Q. What is the width of that berm?

A. The berm right there is about 15 feet wide.

Q. Now what berm are you referring to?

A. The one from the highway to the edge of the ditch.

Q. Is there anything on this berm?

A. Only a Sign, "No parking at any time."

Q. What is the width of that berm?

A. Approximately 15 feet.

Q. Is there any other berm showing in that photograph?

A. Well, there is a berm before you enter this particular entrance which would be, I would say, South towards Entrance No. 2.

Q. Do you know what the width of that berm is?

A. The same, it carries right up through.

Q. Is that right in the foreground of the picture, on the lower part of this exhibit?

A. Yes, that is right.

Q. I show you Exhibit No. 3 for identification and ask you to describe what that shows?

A. This is just looking the opposite way now, looking down Good's Lane towards Plank Road, or 220, which there is a Sign there says "Junction 220", and that is our second entrance, what we call No. 2 Entrance off of Good's Lane, showing the berm, and there is that truck that I identified before as being near Entrance No. 2.

Q. I show you Exhibit No. 4 for identification and ask you to describe what that is?

A. This is on Plank Road, 220, looking at the Sears Service Center where there are two entrances close together, and there is the fifth entrance in the lot clear down there at the top of, well about the center of the picture, you see a car leaving the pick-up zone or leaving the parking lot, that is the first entrance into the shopping center.

Q. Would you identify those entrances as 3, 4 and 5?

A. Yes, the one closest to the bottom would be 3, and then 4, and 5 would be the uppermost entrance.

Q. That uppermost entrance, is that where a car is making a right-hand turn onto Route 220?

A. Yes, that is correct. That is the fifth entrance.

Fred Basehore—Direct
Offer—Petitioners' Exhibit Nos. 1, 2, 3 and 4

Q. Is there any berm in this photograph?

A. Yes, the berm isn't quite as large as over at the other place but I would say it runs around 12 feet.

Q. In width?

A. In width, yes.

Q. And does that berm continue on up to the fifth entrance?

A. Yes, right on through.

MR. LEWIS: I offer these 4 exhibits in evidence as Petitioners' Exhibits 1, 2, 3 and 4.

MR. STRAWMIRE: For what they show, your Honor please, I have no objection.

THE COURT: Let the exhibits be admitted.

Q. Do cars traveling on Plank Road or Good's Lane travel on the berms at all?

A. No.

Q. What do they travel on?

A. On the highway.

MR. STRAWMIRE: If the Court please, that would be objected to. We would assume that the cars would travel on the highway and not on the berm.

MR. LEWIS: All right, we will take the assumption and continue.

Q. Is Weis Markets involved in a labor dispute with Amalgamated Food Employees Union, Local 590?

A. No, they are not.

Fred Basehore—Cross

Q. Are any of the pickets that you have observed picketing in front of the store employees of Weis Markets?

A. No.

Q. Were they ever employees of Weis Markets?

A. No.

Q. Did you ever recognize any of these pickets?

A. Not personally that I have ever known.

Q. Were you ever told who they were?

A. Yes, I was given names.

Q. And who were they?

MR. STRAWMIRE: If your Honor please, that is objected to, if someone told him it would be hearsay.

MR. LEWIS: All right, I withdraw the question, and that is all I have.

Cross-Examination

BY MR. STRAWMIRE:

Q. Mr. Basehore, you are the Assistant General Superintendent for Weis Markets in what area?

A. The Northern area, sir, it covers 29 stores.

Q. Where do you reside?

A. Lewisburg, R. D. 2.

Q. You are not a resident of this area?

A. No.

Q. You have been in this area since this store opened?

A. As I always am at a new store opening, yes.

Q. And how long? Have you been here constantly since the store opened?

Fred Basehore—Cross

- A. No, I haven't.
- Q. You have other duties, don't you?
- A. That is correct.
- Q. You stated that the pickets have varied in numbers between 4 and 13?
- A. Yes.
- Q. What is the average number?
- A. I would say 6 and 7.
- Q. And that is while they were picketing in and about the store area, is that correct?
- A. 13 were in and about the store area.
- Q. Were there 6 and 7 in and about the store area too?
- A. Yes.
- Q. How many were picketing out at the berm?
- A. 5 and 6.
- Q. At what entrances?
- A. At each entrance, well there is maybe 2; 1, 2; 2 or something like that.
- Q. Well now, that doesn't explain too much. At what entrances?
- A. At each entrance there has been pickets.
- Q. You have testified as to entrances 1, 2, 3, 4 and 5?
- A. All right, now I couldn't give you—
- Q. (Interposing) Which is the main entrance would you say from Plank Road by number, which would be the main entrance?
- A. I would say at 5.
- Q. 5 would be the main entrance?
- A. Off of Plank Road.
- Q. And on Exhibit No. 4 you can barely see Entrance No. 5 can you?

Fred Basehore—Cross

A. You can see it as you can see the cars coming out of that entrance.

Q. You can see but you can't see how wide it is and so forth?

A. It is the same as the rest of them, sir.

Q. It is the same as the rest of them?

A. Yes, the entrance is approximately 20 feet wide and the berm carries the same down through.

Q. And then entrances 3 and 4 are entrances primarily to the Sears Gas Station or Service Center, is that right?

A. I would say 3 is, Entrance No. 4, people use that also to go into the Center.

Q. Exactly. No. 4 is utilized also to go into Weis Market and to Sears, is that correct, the store proper?

A. Yes, I would say primarily Sears off of that particular entrance.

Q. Entrance No. 2 is utilized by people going to both places of business, is that correct?

A. Yes.

Q. And Entrance No. 1 the same way?

A. Yes, I would say primarily that is the people coming into our Store but it can be used for both, that is correct.

Q. Do you know how many people use which entrance to go to which store?

A. I couldn't give you an honest answer.

Q. No, it would be rather difficult, wouldn't it?

A. Yes, it would be rather difficult.

Fred Basehore—Cross

Q. So that there are people coming into all the entrances and going to both of the stores, is that correct?

A. Yes.

Q. You stated that Weis Markets owns the store parking lot, is that right?

A. That is right.

Q. Do you know under what legal arrangement Weis Markets has any interest in the parking lot?

A. No, other than they own the property.

Q. You don't know, do you?

A. I know they own the property.

Q. How do you know they own the property?

A. How do I know? Because I have been told it is our property.

Q. You have been told. You don't know of your own knowledge what they own, is that correct?

A. I know that if they tell me they own the property they own the property.

Q. What you have been told, is that correct?

A. That is right.

Q. If I state that in the Complaint or in the order of court which was prepared by the attorneys for Weis Markets it states:

“Picketing and trespassing upon the private property of plaintiff Logan Valley Plaza, Inc. located at Logan Valley Mall, including parking area and all entrances and exits leading to said parking area.”

Fred Basehore—Cross

And it further states:

“Picketing and trespassing upon the private property of the plaintiff Weis Markets, Inc., located at Logan Valley Mall, Altoona, Pennsylvania, including as such private property the storeroom, porch and parcel pick-up area.”

Would you say that the attorneys for Weis Markets would be wrong?

MR. LEWIS: Objection. I don't think it is proper for a witness to characterize whether the attorneys are right or wrong.

MR. STRAWMIRE: I will withdraw the question, if your Honor please.

Q. The fact is that you do not know under what legal arrangement the ownership of the land or store or anything there is except by what someone has told you, is that correct?

A. Yes.

Q. You have never seen a deed, you have never seen any agreement between Logan Valley Plaza, Inc. and Weis Markets have you?

A. Yes, I have seen an agreement.

Q. What is the date of that agreement?

A. That I couldn't answer.

Q. What does the agreement provide?

A. It provides the Center may use the property for installing a parking lot, any drainage lines, or what have you that has to be utilized in building a shopping center.

Q. Who is the agreement between?

Fred Basehore—Cross

A. I would say Weis Markets and Crown Construction Company.

Q. I don't know of any such agreement. Mr. Basehore, what is the distance between Entrance No. 1 and Entrance No. 2?

A. Sir, I couldn't give you that in footage, I don't know.

Q. You said you measured it off 350 feet?

A. From the store to the Number 1 entrance there, that is what was stated.

Q. I misunderstood you. From Weis Market store building?

A. That is right.

Q. To Number 1 entranceway?

A. That is correct.

Q. Is 350 feet?

A. Yes, approximately.

Q. From the store to Number 4 entranceway, how far is it?

A. That I could not answer, sir, I do not know.

Q. Is it further or less distance than 350 feet?

A. I would say it is further, sir.

Q. From the store to Entrance No. 5, which you have described as being the main entrance is a distance of how far?

A. It is even further, sir.

Q. It is even further?

A. Yes.

Q. Would it approximate perchance up to 450 feet or 500 feet?

A. Yes.

Fred Basehore—Cross

Q. You say on December 17th four men arrived with Signs and they located themselves on the parcel pick-up zone?

A. Correct.

Q. Did that halt your store business?

A. No, it didn't halt it, but it sure involved a lot of I would say constant navigating by customers in and out, and in fact I have even heard comments from customers on this.

Q. What did the customers comment?

A. They wanted to know why the people were out there and she said she almost hit one of them.

Q. She almost hit one of them?

A. Yes.

Q. And they were in your parcel pick-up area?

A. Right.

Q. And that is located right next to your porch?

A. Yes it is, right adjacent, right beside it.

Q. And next to that area then there is 2 lanes of traffic, next to the parcel pick-up area would there be 2 lanes of traffic?

A. There could be 2 cars pass there yes.

Q. Now you have stated that the speed of cars at that area is the same as speed of cars entering from Plank Road?

A. They have come down along Sears there, sir, and they turn on the pick-up area yes.

Q. They have at times, is that what you are saying?

A. Oh yes.

Q. You say that speed there is always the same as speed of cars entering from Plank Road?

Fred Basehore—Cross

A. It will vary, even somebody entering into Plank Road could be going at excess speed.

Q. Are you familiar with Plank Road?

A. Yes, I am.

Q. It is a pretty heavily traveled highway, isn't it?

A. It certainly is.

Q. And the cars move with very good speed too, don't they?

A. On Plank Road they do yes, but you can not navigate a turn properly by excess speed as you enter the lot too.

Q. Do you have a picture of the main entrance-way, Number 5?

A. It is shown on Number 4.

Q. Do you have a separate picture of Entrance No. 5?

A. No, we don't.

Q. Now you relate one incident where a car stopped and Mr. Toft I believe—I don't think you did mention the name?

A. No, thank you, I didn't.

Q. You mentioned one incident where a car stopped and someone was talking to the occupant of that car, and you identified the operator of the car as being the Manager of the A & P Supermarket where?

A. Plank Road.

Q. You didn't know him, did you?

A. I had seen him before in his store, yes.

Q. You saw him before at his store?

A. Yes.

Fred Basehore—Cross

Q. You were in his store were you?

A. Yes, I was.

Q. What were you doing in his store?

A. Just looking around.

Q. Just like some of these people were looking around your store?

A. Yes.

Q. Were you comparison shopping?

A. No, I didn't make any notes as far as that goes.

Q. You looked around his store to see what his operation is and so forth?

A. Yes.

Q. The same as these people did here?

A. Yes.

Q. Did they cause you any trouble when you asked them to leave or your employees asked them to leave the store?

MR. LEWIS: Objection. There was no testimony by this witness concerning people in the store.

THE COURT: Objection is sustained.

MR. STRAWMIRE: Very well.

A. I didn't ask any one to leave the store.

Q. You testified as to one occasion where someone stepped on the porch?

A. That is correct.

Q. These were some ladies that were picketing?

A. That is correct.

Q. Did they cause problems by stepping on the porch?

Fred Basehore—Cross

A. No, but I was asked if they had stepped on the porch. I answered the man's question, they had stepped on the porch.

Q. They didn't cause you any problems?

A. The question wasn't asked that way.

Q. I am asking the question, did they cause you any problems?

A. No problems.

Q. On the 21st you stated there were 13 pickets there, is that correct?

A. That is correct.

Q. It is on that occasion that some of them were walking abreast?

A. That is right, and even during the afternoon, that was when the 13 were there, they had walked more than two abreast, and also in the afternoon while the girls were there, they were walking four abreast many times.

Q. And at that time they were walking, is that correct?

A. Both, they would stand and—

Q. (Interposing) Where were they standing or where were they walking?

A. Right where the cars will drive in for the groceries.

Q. Did they halt or stop the cars from driving in for their groceries?

A. It hindered it, sir.

Q. It hindered it. Did people get in for their groceries and did they get out with their groceries?

A. Yes, but very annoyingly they did.

Q. Annoyingly to who? To the people or to you?

Fred Basehore—Cross

A. To the customers.

Q. You stated that most of the time they were walking about 2 feet from the porch?

A. Yes.

Q. In other words, the bulk of the time they were not on the porch, is that it?

A. They were only on the porch that one occasion as I answered.

Q. And you have a sign posted on the porch, is that it?

A. That is correct.

Q. And the sign says, "No trespassing or solicitation without the consent of the management", is that correct?

A. That is correct.

Q. Does it say "no picketing"?

A. "No trespassing."

Q. Does it say "no picketing"?

A. No, sir, it doesn't.

Q. So that you have been open since what date?

A. December 8th.

Q. And since December 8th you have carried on operations, is that correct?

A. That is correct.

Q. And you have opened and closed every day except Sundays or Holidays, is that correct?

A. Correct.

Q. And people have come to your market and have purchased and left, is that correct?

A. Yes.

MR. STRAWMIRE: I have no other questions at this time.

Fred Basehore—Redirect
Fred Basehore—Recross
Fred Basehore—Redirect

MR. LEWIS: I have one or two on rebuttal questions.

Redirect Examination

BY MR. LEWIS:

Q. Would you restate the full wording of that Sign that is on the porch as you can recall it?

A. "No trespassing or soliciting on the porch or Weis Parking Lot other than Weis employees without the consent of the Management."

Q. What is the main entrance used by customers of Weis Markets? What entrance do they most frequently use of 1, 2, 3, 4 and 5?

A. I would say 1 and 2.

THE COURT: They are off of Plank Road?

A. Off of Plank Road, yes, sir.

MR. STRAWMIRE: If your Honor please, there is some confusion.

Recross-Examination

BY MR. STRAWMIRE:

Q. Off of Plank Road, is that your answer?

A. For Weis Market customers.

Redirect Examination

BY MR. LEWIS:

Q. 1 and 2 is on what road?

Fred Basehore—Recross

A. I am sorry. I am sorry, your Honor, off of Good's Lane. Good's Lane is 1 and 2. Thank you.

Recross-Examination

BY MR. STRAWMIRE:

Q. Mr. Basehore, which is the most heavily traveled road? I am sure the Court knows but do you know? Plank Road or Good's Lane?

A. Plank Road.

Q. And yet you say that most traffic comes in from Good's Lane?

A. For us, yes.

Q. Well, isn't there traffic comes into you from Plank Road?

A. I would say there is a certain amount naturally. I would be giving a wrong statement if I said differently, but I would say most of the people come up to Good's Lane, make a right, come down and come in the entrance to our store.

Q. You have been there since the store opened, do you know whether any of your customers also shop at Sears?

A. I know they do.

Q. Why sure they do, don't they? They do two things at one time with a visit to the Mall, is that correct?

A. Yes, I would say. There is also people who don't. I imagine there are people come in and just shop Sears and leave, and there is people who come in and Shop Weis's and leave, and there are people who shop both, certainly.

Fred Basehore—Redirect
Fred Basehore—Recross
Stipulation

Redirect Examination

BY MR. LEWIS:

Q. I have one other question. Is there any other stores besides Sears and Weis's presently in this location?

A. No.

Recross-Examination

BY MR. STRAWMIRE:

Q. There are other stores contemplated but none presently finished?

A. Correct.

MR. LEWIS: We rest our case, your Honor.

We would like to offer a Stipulation concerning the references to the deed, the documents of record that were referred to previously, and I think there will be a Stipulation between the parties.

THE COURT: Very well.

MR. WOODCOCK: I represent Logan Valley Plaza, Inc., and Logan Valley Plaza, Inc. and Weis Markets have an agreement which is duly recorded in Deed Book Vol. 831 at page 36, which is incorporated here by reference, there are two.

Colloquy

There is a deed from Weis Markets, Inc. to Logan Valley Plaza, Inc., in Deed Book Vol. 831, page 47, which deeds to Logan Valley Plaza, Inc., well, I will let the deed speak for itself, let the record speak for itself.

Logan Valley Plaza, Inc. also owns an area of ground acquired from Latimer Hoopes Coleman et al., in Deed Book Vol. 831 at page 57.

That encompasses all the ground in this dispute at the present time.

MR. STRAWMIRE: Logan Valley Plaza, Inc. owns the major portion of the parking lot subject to the agreement with Weis Markets as to the use and maintenance of that area.

MR. LEWIS: Your Honor, we offer this document reference as a Stipulation without characterizing it, it speaks for itself. Will the defense counsel—

MR. STRAWMIRE: (Interposing) If your Honor please, it does not speak for itself for this reason, it contains a rather involved and long legal description and as to where the legal description fits in as to the parking area I don't know, I am no surveyor, and I think these gentlemen can answer that question.

MR. LEWIS: Well, if defendant's counsel refuses to stipulate as to the location then that is it. I think, nevertheless, it is in the record in case anybody wants to pursue the matter.

Motion To Dissolve; Ruling

We rest our case, your Honor.

MR. STRAWMIRE: If your Honor please, I would point out to the court that the Complaint in Paragraph 6 states that:

“Weis Supermarket being located at and surrounded by the property of the other plaintiff known as Logan Valley Plaza, Inc.”

If your Honor please, at this time I would like to renew the motion to dissolve this preliminary injunction on the basis of what testimony they have presented by Mr. Basehore. It certainly is not a case of mass picketing, anything that could be considered to have impeded the operation of Weis Market to the point necessary to require a preliminary injunction against the picketing. There is no question that we still feel that the picketing is properly, both under the law and the facts, at the Weis Market area and not out at that berm, and we would renew our motion to dissolve the preliminary injunction as it stands or to modify the injunction. Depending on your ruling we would present testimony.

THE COURT: Motion is refused at this time.

MR. HAROLD DEIBLER, after having been duly sworn according to law was examined as follows:

H. G. Deibler—Direct

Direct Examination

BY MR. STRAWMIRE:

Q. Will you state your full name please?

A. Harold George Deibler.

Q. And what is your position with the defendant Union?

A. Representative.

Q. I think you are familiar with the matter of picketing at the Weis Market in the Logan Valley Shopping Mall, is that correct?

A. Yes.

Q. Have you been present during the time of the picketing since it commenced?

A. Most of the time.

Q. With regard to this picketing will you describe as to what type of picketing it is?

A. It is strictly informational directed to the public.

Q. As to this type of picketing whose decision was it to have picketing of this nature?

MR. LEWIS: Objection, your Honor.

A. If you know.

MR. LEWIS: I do not think it is relevant whose decision it was.

THE COURT: Just what was done. The objection is sustained.

Q. With regard to the picketing since it commenced, when did it commence?

A. Around 5:00 o'clock, between 5:00 and 5:30 o'clock on December 17th.

H. G. Deibler—Direct

Q. And at that time how many pickets were present and where were they?

A. There were four present and we began directly in front of the store outside of the yellow line, there was a yellow line marking the parcel pick-up area, and we walked up and down on the outside of that yellow line.

Q. Did you have signs or what?

A. Signs, yes.

Q. Were there any of you walking abreast?

A. Not at that time when we started.

Q. Were you in any way blocking the parcel pick-up area?

A. No.

Q. Would you describe for the court what the parcel pick-up area consists of?

A. It is an area which is possibly 5 feet wide, 4 or 5 feet wide, and maybe 30 to 40 feet long, which is marked off with yellow lines, it is directly in front of the porch of the store.

Q. At this parcel pick-up area how many cars would it accommodate?

A. Well, all depending on how they pulled in, possibly 4 but usually around 3.

Q. This first day there was an incident testified to as relating to the Manager of the A & P pulling up in his car, do you recall that?

A. Yes.

Q. Would you tell us what you observed? Did you observe it first of all?

A. Yes, I did observe it.

Q. What was it that you observed?

H. G. Deibler—Direct

A. He came from around the corner in front of Sears in a traffic lane and had gone I would say approximately three car lengths from the entrance of the store and evidently saw somebody he recognized and talked to.

MR. LEWIS: Objected to "evidently he saw somebody."

THE COURT: That objection is sustained. Just what you saw, that is all.

Q. Just what did you see. In other words, did the car stop?

A. It stopped.

Q. And someone talked to the Manager of the A & P who was driving it?

A. Yes.

Q. Was that in the parcel pick-up area?

A. No, it was in the line of traffic area.

Q. Did it block traffic?

A. No.

Q. Was traffic moving at the time?

A. No, I didn't see any traffic moving at that time because there was space behind and alongside of the car.

Q. In other words, there were no other vehicles at the area at the time, is that what you are saying?

A. There could have been one at the very first parcel pick-up area.

Q. Was there any traffic congestion at the time?

A. No.

Q. There has been testimony with regard to the 21st day of December, that there were some 13

H. G. Deibler—Direct

pickets at the Weis Market area, would you describe for the court what occurred, what you observed on the 21st?

A. On the 21st probably all day long there was no more than 6 pickets at any one time, because I know myself that day I picketed for a period of time by myself, and only at such time that there was 3 people there did I leave to go get something to eat, and I left 9 signs with the pickets that were there when I left, and when I came back they were all wearing signs, all 9 signs were used. One of the pickets reported to me that I did not leave enough signs; that some of the fellows came and there wasn't signs, so what they did was relieve some of the fellows that had been walking to go get coffee and they put on the signs.

Q. Now then there has been testimony as to 2, 3, 4 people walking abreast on that particular day, did you observe this?

A. There could have been, I didn't observe it no, but there could have been when there was no traffic or anything maybe 2 fellows walked side by side to talk.

Q. In the complaint of the Plaintiff's they have alleged that the Defendant Union "caused large numbers of persons to congregate in front of and about the entrances of the Weis Markets, Inc. store restricting said Plaintiff's employees, customers and other persons having lawful business therein, from entering or leaving said Plaintiff Corporation's premises", and again they say, that the Defendant has "caused large numbers of persons to congregate in front of and about the parking and cus-

tomer loading areas of the Weis Markets, Inc. store, thereby interfering with and restricting said Plaintiff's employees, customers and other persons having lawful business therein from parking their vehicles and entering and leaving said Plaintiff's parcel pick-up zone." With regard to these averments in the Plaintiff's Complaint would you describe for the court please as to what the pickets have been doing, or did, at the time they were picketing at the immediate area of the store?

A. First of all, they were all instructed definitely not to block traffic nor to block the parcel pick-up area, and if at any time that there were cars in line, such as, let's say a car pulled up to the parcel pick-up area, the first spot he pulled in and parked to pick up his groceries, therefore, the cars behind him became tied up, and as a result we couldn't even walk through, so the fellows would either step off to the side between the buildings where there is an area there that is unimproved until the area would be cleared, and the ones that were still out front walking would continue to walk in a single file, anyway as long as they did not interfere with the traffic, this is definitely their instructions and they carried them out.

Q. Did they talk to people?

A. Only if the person came up to them and said something to them they would answer normally.

Q. Did they pass out literature?

A. Not at this time, no.

Q. While they were in by the store area they passed no literature?

H. G. Deibler—Direct

A. No literature.

Q. I show to you a paper, which has been marked for the purposes of identification as Defendants' Exhibit No. 1, and would ask you to state what it is?

A. It looks to be an overall map of what I would assume is the Logan Valley Mall or Plaza.

Q. Well, is it the Logan Valley Plaza?

A. Yes.

Q. And the area which is marked in red represents what?

A. The stores now presently in operation.

Q. The present buildings located there, is that what you mean?

A. Yes.

Q. The other areas are proposed buildings which have not been erected, is that correct?

A. That is correct.

Q. And does the print as far as you know accurately portray the various parking areas and the Plank Road and Good's Lane?

A. Yes.

Q. I have marked in pencil Numbers 1, 2, 3, 4 and 5 in accordance with the Plaintiff's testimony being the numbered entrances to the shopping area. Do you see those numbers?

A. Yes.

Q. And those entrances Number 1 and Number 2 are on Good's Lane, is that correct?

A. Yes.

Q. And Number 3, Number 4 and Number 5 are on Plank Road, is that correct?

H. G. Deibler—Direct

A. That is correct.

Q. With reference to the entrances to the shopping center, which is the more heavily used entrance?

A. Number 5.

Q. And that is the entrance off of Plank Road?

A. Yes, sir.

Q. When you say that is the most heavily used entrance do you mean overall traffic into or out of the shopping center area?

A. Yes.

Q. You have no way of knowing as to how much traffic is going to Weis Market or how much is going to Sears?

A. No.

Q. The next heaviest used entrance would be which? If there is, or if they are all the same then from there on, whatever it is?

A. It would be hard for me to make a decision as to which is the next heavily traveled.

Q. The Entrance Number 5 is clearly the more heavily traveled entrance?

A. Definitely.

Q. There has been testimony with reference to the speed of motor vehicles at about the parcel pick-up area of the Weis Market, did you hear that testimony?

A. Yes.

Q. The statement was made by Mr. Basehore, the witness, that the speed of vehicles at that area was about the same as the speed of vehicles at the entrance to Plank Road, or at the entrances I believe, did you hear that testimony?

H. G. Deibler—Direct

A. Yes.

Q. Would you please tell the court as to what your experience has been with reference to the speed of vehicles at these two points?

A. The speed of the vehicles coming in in most instances is much greater than the speed down at the parcel pick-up area.

Q. Why is that?

A. The reason for that is that there is a sharp L-turn at the corner. In other words, you come down along Sears and you make a sharp 90-degree turn to go past the parcel pick-up area and our customers crossing from Weis into the parking lot, so as a result you just can't come around there at the same speed as you would enter the parking area from the roads.

Q. Is there any traffic control of any nature at the Weis Market area?

A. There was for two nights, the first two nights that we were there.

Q. And what was that?

A. An officer of some sort in a uniform directed the traffic.

Q. At the Weis Market area?

A. At that corner right there by Sears and Weis Market.

Q. With reference to the picketing, before the preliminary injunction issued at the Weis Market area you have testified as to 4 pickets the first night and up to 9 I think on the 21st. What has been the average number of pickets at the Weis

H. G. Deibler—Direct

Market area before the preliminary injunction issued?

A. I would say average about 5.

Q. About 5 pickets?

A. Yes.

Q. These pickets, as you observed them and as you participated, did they cause congestion, did they cause interference with the Weis Market business?

A. No.

Q. Has there been any disorder at the location of the pickets in any way?

A. No.

Q. After the preliminary injunction issued when you began to picket at the entranceway how many pickets and how did you operate the pickets at these various entrances?

A. As you are numbered at the 5th entrance I had 2, at the 4th entrance 2, off and on on the 3rd entrance 1, and 1 and 2 on 1 and 2 entrances, I mean, depending on the number of people I had available.

Q. Have you experienced any problems with reference to picketing at the entrances?

A. Are you speaking for myself?

Q. Yes. Well, in operating the pickets and organizing the pickets there at the entrances have you experienced any problems?

A. No.

Q. Well now, with reference—I don't mean problems with the pickets themselves, I mean problems in safety or anything of that nature?

H. G. Deibler—Examined by the Court

A. Yes, there have, because of, like along Plank Road, which is a 4-lane highway, on Number 5 Entrance we have had instances where people cut the corners short, and even though the picket is standing back on the berm of the road off of the paved part of the entrance, that cars have come close to the pickets, and the same has happened on exiting on Number 4, and Number 1 and Number 2, because they come in, some of them come in at a pretty good rate of speed and as a result they sort of take a corner to corner shot at the entrance.

Q. With reference to the picketing at the entrances has there been any attempt made by the pickets to block entrances in any way

A. Oh no.

Q. Are the pickets moving constantly?

A. Yes, moving around to some degree.

Q. Has there been any attempt to stop motor vehicles?

A. No.

Examination

BY THE COURT:

Q. Is Entrance Number 4 exit only there?

A. No, sir, this can be ingress and egress of traffic.

Q. The same with Number 3, that is near the Service Station, isn't it?

A. Yes, but there is not too much traffic goes into the shopping center from Number 3, sir. Most of that is coming in just to the Service Station

H. G. Deibler—Direct
H. G. Deibler—Cross

from Number 3, but Number 4, sir, is used both to gain access to the parking area.

Q. Where are you picketing now?

A. At the—Do you want me to tell you by number?

Q. Yes?

A. Number 1, Number 2, Number 4 and Number 5.

Direct Examination (Continued)

BY MR. STRAWMIRE:

Q. Number 3 you do not picket and the reason for that is what?

A. Sears, I believe he to be the Manager of the Sears Station, the first night I was there he asked us not to because the only traffic he said that comes in there is just for the Service Station, and we observed that from the Number 3 entrance that this was only used for coming into the Service Station or leaving the Service Station, so as a result we did not picket this entrance.

Cross-Examination

BY MR. LEWIS:

Q. Where do you live?

A. New Kensington.

Q. And you say your official position with the defendant Union is representative?

A. Yes, sir.

H. G. Deibler—Cross

Q. Is it International Representative or Local Representative?

A. Just Local.

Q. You are employed by the Local?

A. Yes, sir.

Q. Do you work in any store any place?

A. Yes.

Q. What store?

A. A & P.

Q. Where is that located?

A. In Holiday Park.

Q. Is this on a full time basis?

A. Which?

Q. Working in the A & P at Holiday Park?

A. Yes.

Q. When were you on the picket line then? On a part time basis when your work was finished with the A & P?

A. No.

Q. When was this? On what occasions did you spend time around the picket line?

A. Every day.

Q. When your work was finished with the A & P?

A. No, I am temporarily employed as a representative.

Q. I see. Are you on a leave of absence?

A. Yes.

Q. I see. Okay. Are you in charge of this picketing at this place?

A. Yes.

Q. Are you familiar with the people who are picketing?

H. G. Deibler—Cross

A. Yes.

Q. Who are they? What are their names?

A. Understand not to the extent that I can identify every one by name, but they are Local 590 members.

Q. All right, will you tell me how many you can remember?

A. Clyde Ritchey, John Clinemyer, Thomas O'Leary, Joe Steinbeiser, Joe Miller, Leo Baker, John Palmer, Paul Walker, Jim Williams, Stiffler—There are two brothers, their first names I don't remember. Ken Weaver, Frank—The Produce Manager in the A & P on 12th Avenue. I don't remember his last name.

Q. Is he the store manager there or the produce manager you say?

A. Produce Department Head.

Q. At the A & P on 12th Avenue?

A. Yes.

Q. Ken Weaver, where does he work?

A. Hollidaysburg.

Q. In the A & P?

A. Yes.

Q. And the two Stiffler brothers, where do they work?

A. The one works for the A & P and, well, both of them work A & P.

Q. And Jim Williams, where does he work?

A. A & P.

Q. Paul Walker?

A. Acme.

Q. John Palmer?

H. G. Deibler—Cross

- A. A & P.
Q. Leo Baker?
A. A & P.
Q. And Joe Miller?
A. I believe A & P.
Q. Joe Steinbeiser?
A. A & P.
Q. Thomas O'Leary?
A. Acme.
Q. John Clinemyer?
A. A & P.
Q. Clyde Ritchey?
A. A & P.
Q. I notice you didn't mention any women, did you also have some girls picketing?
A. Yes, sir.
Q. Who were they?
A. I remember one girl as Lillian and she was from Quaker.
Q. Is she white or colored?
A. White.
Q. Did you have a colored girl picketing?
A. Yes.
Q. What was her name?
A. I don't really know. I don't remember.
Q. Do you know what store she came from?
A. Yes, A & P from Plank Road.
Q. Were there any other women or just the two women? Were there 4 women by any chance?
A. There was probably over the period of time since we started picketing more than 4, because I think on one day there were 4 there on one afternoon.

H. G. Deibler—Cross

Q. Did they come from the A & P Store?

A. This I can't be certain of.

Q. I show you photographs which have been identified as Petitioners' Exhibits No. 5, No. 6 and No. 7, and ask you first before I show you the photographs, while counsel is looking at them, were you present on the 21st, on December 21st, that is the day I think that it was testified there were 13 pickets and you testified I think there were 9 plus?

A. I was there most of the day, I wasn't there all of the time.

Q. Well, there were times when you left?

A. Well in the evening, I had been there practically all day and in the evening when there were enough replacements came that I had at least 4 I left to have supper and I came back.

Q. You say you left 9 signs for them to use?

A. That's right.

Q. And somebody said there weren't enough signs?

A. That's right.

Q. So at one time there were more than 9 people actually standing in the area in front of the store, is that correct?

A. Well, qualify the word "standing" because standing could be a second long enough to take the sign from one person to another.

Q. I see. So it could have been that for, let's say for a minute or two, there were more than 9 people actually grouping together in front of the Weis Store from your Union?

H. G. Deibler—Cross

A. They wouldn't be grouped, when you speak of group you would say that they would all be in one cluster at one spot.

Q. Let's say in front of the store?

A. That could be strung out over a long area.

Q. Yes. Would you say there could be more than 9 spread out over a long area in front of the store?

A. Yes.

Q. And you say the reason for that was they were probably changing signs?

A. Right.

Q. That is just what I want to clarify. Now I show you Petitioners' Exhibit No. 5 and ask you how many pickets you can see in that picture?

A. I can see 4.

Q. How many were walking abreast?

A. The way the angle the picture was taken at this could be deceiving because they don't look like they would necessarily be side by side, they may be 2 or 3 steps behind one another at a slight angle.

Q. I see your point. All right. Looking at the picture how many would you say that you would testify from the picture were standing abreast? Two (2)?

A. Two would be the closest.

Q. With the third person maybe a foot behind or perhaps 2 feet depending on the angle of the picture?

A. Yes, 2 feet or 3 feet could be.

Q. Fine. I show you Petitioners' Exhibit Number 6 and ask you how many pickets you see in that picture?

A. Actual pickets I see 2.

H. G. Deibler—Cross

Q. And these are the women?

A. Yes.

Q. With relation to the parcel pick-up area and with relation to the curb on the porch how close are they?

A. The one is standing next to the curb and the other one I would say would be roughly 3 to 4 feet away.

Q. And I show you one more, Petitioners' Exhibit No. 7, and ask you how many pickets you see there?

A. Two (2).

Q. And are they standing directly in front of a car?

A. They are walking down towards the front of a car yes.

Q. Are they in the parcel pick-up area?

A. Yes.

MR. LEWIS: I offer these in evidence.

MR. STRAWMIRE: I would like to cross-examine him as to them.

MR. LEWIS: All right. I offer these as Petitioners' Exhibits No. 5, No. 6 and No. 7. Do you want to cross on them?

MR. STRAWMIRE: Yes.

MR. LEWIS: Would you want to hold your ruling in abeyance then, or do you want to do it now, your Honor, at this point?

THE COURT: As to their admissibility here?

H. G. Deibler—Redirect

MR. LEWIS: Yes.

Redirect Examination

BY MR. STRAWMIRE:

Q. Were you present when these pictures were taken?

A. Evidently not.

Q. Do you recall the scene? If you were present you would recall the scene I would presume?

A. Yes.

Q. Do you recall these 2 girls picketing?

A. Can I qualify this?

Q. Sure.

A. I know that they came and reported to me and took over picketing, and because there were 4 of them then I left to make a couple phone calls to take care of some of my affairs, and I was not present at any time the 4 girls were picketing.

Q. Exhibit No. 6 and Exhibit No. 7 portray the 2 girls, show the 2 girls in the parcel pick-up area I guess it is, and Exhibit No. 7 shows other people in the parcel pick-up area apparently not pickets, is that correct?

A. This one?

Q. Yes?

A. Apparently not, they weren't pickets.

Q. And Exhibit No. 7 shows a motor vehicle and the pickets are in front of it? Right?

A. Yes.

Q. Is there any one in the motor vehicle?

A. No.

*H. G. Deibler—Redirect
Offer—Petitioners' Exhibits Nos. 5, 6 and 7*

Q. The car is unoccupied, is that right?

A. That is right.

Q. And it shows a motor vehicle on Exhibit No. 6 but it shows a mere portion of the hood? Right?

A. Right.

Q. The same 2 girls in both pictures? I guess. I don't know?

A. No, they are not, they were evidently taken at different times.

Q. No, they are not the same. Two different. Are these the 4 girls that were there picketing?

A. Yes.

MR. STRAWMIRE: I have no objection, if your Honor please, except that with reference as to who took the pictures and what occasioned the taking of the pictures. I have had no opportunity to question any one, although I see no harm in allowing them in.

THE COURT: Let the exhibits be admitted. You are offering them?

MR. LEWIS: Yes, that is Petitioners' Exhibits No. 5, No. 6 and No. 7.

Incidentally, was that street plan offered in evidence? Do you intend to?

MR. STRAWMIRE: Not yet.

MR. LEWIS: You haven't yet. I will use it for purposes of cross-examination.

*H. G. Deibler—Recross**Recross-Examination*

BY MR. LEWIS:

Q. You testified that there were certain boxes marked in red in this exhibit, would you state which boxes they were please?

A. Weis Market, Sears Department Store, and one labeled Shops, it is illegible here, but it is Sears Service Center.

Q. You also testified that this exhibit showed proposed stores that were going to be opened here. You don't know of your own knowledge whether or not the stores listed on this exhibit are going to be opened or not do you?

A. No.

Q. The only two stores that are presently open for business, or constructed, are Sears and Weis, isn't that so?

A. And the Service Center.

Q. And the Service Center, isn't that so?

A. Yes.

Q. I just wanted to clarify that point. You testified concerning names of the pickets, and you testified that they were employees of A & P, Acme and Quaker. In order to obtain these pickets did you help to make any arrangements with the stores?

A. No.

Q. Were these people picketing on their own time or on Company time, their own Company?

A. On their own private time.

Q. Did you make an appeal to employees in general of these other stores to picket at Weis's?

A. No.

H. G. Deibler—Recross

Q. Did you ever have a meeting?

A. A meeting of the members?

Q. Yes?

A. No.

Q. How did you obtain these people?

A. Contacting each store.

Q. I see. What did you ask?

A. I asked them if they had people that would be willing to volunteer some of their time to picket.

Q. At where?

A. Weis Market.

Q. I show you Petitioners' Exhibit No. 2 and ask you to indicate an X on this exhibit where the pickets were stationed during the time subsequent to the court injunction in this matter? Will you put an X in the spot where they were, and we will understand that they were moving around within a matter of inches or feet of this X?

MR. STRAWMIRE: If your Honor please, if he can clarify this. I don't think this man can state where all these pickets were at the moment or within what area they walked. If the question is where did he instruct the pickets to be that's—

MR. LEWIS: (Interposing) All right, that is my question then. I will take that as an amended question.

Q. Where did you instruct the pickets to station themselves, looking at this particular entranceway if you will please, can you put an X in that spot?

A. I can't put it in one spot because there is a berm here.

H. G. Deibler—Examined by the Court
H. G. Deibler—Recross

- Q. Did you instruct them to walk on the berm?
A. To stay along the berm and move around.
Q. On the berm?
A. Right.
Q. Can you put a circle in the area where they were to stay on the berm?
A. (Witness complies.)
Q. Are you marking across the driveway too?
A. Yes.
Q. Oh, then you instructed the pickets to walk across the driveway in addition to standing on the berm?
A. Yes.
Q. I see.

Examination

BY THE COURT:

- Q. By driveway you mean the State Highway?
A. No, the cemented part which is the access.
Q. The access into the shopping center?
A. Right.

Recross-Examination (Continued)

BY MR. LEWIS:

- Q. Is that your understanding of the berm?
A. Yes.
Q. That is a berm?
A. That is my understanding. You asked me.

H. G. Deibler—Recross

Q. Okay. Fine. I am just raising an eyebrow. That is all right. He may be right and I may be wrong, but I didn't understand that to be a berm.

A. The only difference is somebody put a hunk of cement down to make it convenient for somebody to get in, that is all.

Q. I see. All right. That is your interpretation.

MR. STRAWMIRE: I think he is right to tell you the truth.

MR. LEWIS: Well, he may be right, but I understood it to be the dirt on either side of the driveway, and perhaps the court's injunction didn't clarify that point, but that is not what I am asking. I just want to know where it was that these people were standing, and the reason why I asked that, I will say very frankly, and I say it to the Court, because there was some testimony concerning cutting in on sharp corners, and I couldn't quite understand how a person standing on the dirt part of the berm could be affected by anybody cutting in on a sharp corner.

A. Do you want me to tell you?

Q. Yes, would you tell me that?

A. When you see a car coming it is natural when you are not trying to block a driveway to step aside off of the cement, and people have a tendency to not go around the corner like they nicely cemented it, but to take a short cut.

H. G. Deibler—Recross

Q. All right. Now if the pickets had stood on the dirt portion of the berm—let's take your definition that the whole thing is the berm—if the pickets had stationed themselves on either side of this paved portion and they were on the dirt portion would they be affected by cars at all?

A. Yes, that is what I am telling you, they take a short cut across, if they are coming in at a high speed they cut across at an angle from here over to here (demonstrating).

Q. All right. I understand your point. Looking again at this exhibit, and let's say a picket stood by the post which says "No parking", which looks like a few feet from the driveway?

A. (Interposing) It is more than a few feet.

Q. Well let's say—how many feet would you say?

A. I would say probably 8 to 10 feet back.

Q. All right, let's say they stood at that point 8 to 10 feet back and they stood right at the post, would they be affected?

A. They?

Q. A picket?

A. A picket, as an individual, not necessarily.

Q. Because the car would hit the post, or the car would go into the ditch, wouldn't it?

A. Not necessarily, but.

Q. (Interposing) Pretty close, or the car would go into this big pole that is standing up, isn't that correct?

MR. STRAWMIRE: I would like an objection on the record at this time. The prelim-

Colloquy

inary injunction in no way states that these pickets must be between entrances. This is what the design of the present line of questioning is to imply, and, therefore, this line of questioning is objected to. The witness has testified that they were at the berm on the entrances, and his understanding of the berm is the berm of the highway, and that they moved aside when vehicles came to and from the entrances, and I do not think the line of questioning is proper in view of the fact it is attempting to imply that the pickets should be between entrances and not at the entrances itself.

THE COURT: Objection is overruled.

MR. LEWIS: Well, your Honor, actually I have nothing further to add to this, nevertheless, I thought it would be well to clarify this for the record. It was my understanding of the injunction.

MR. STRAWMIRE: (Interposing) The objection has been overruled.

MR. LEWIS: I will finish my sentence anyway. It was my understanding of the injunction that the intent was to have pickets on the dirt only. Perhaps I have misunderstood.

MR. STRAWMIRE: I don't see the word dirt in here any place.

Offer—Defendants' Exhibit No. 1
Certificate of Reporter

THE COURT: It was all for the matter of clarification. The Court has already ruled.

(Court recessed from 2:25 p.m. to 2:38 p.m.)

THE COURT: The Plaintiffs have rested?

MR. LEWIS: We rest, yes.

MR. STRAWMIRE: We rest, and I would like to introduce into evidence Defendants' Exhibit No. 1, that being the map.

THE COURT: Let the exhibit be admitted.

MR. LEWIS: I don't object to the exhibit being admitted providing it is understood that I don't agree that it represents an accurate picture of either the present or the proposed plan, but I will not object to the exhibit for whatever it is worth.

THE COURT: We will admit it for the purpose for which it was offered.

MR. STRAWMIRE: To show the location of various places generally.

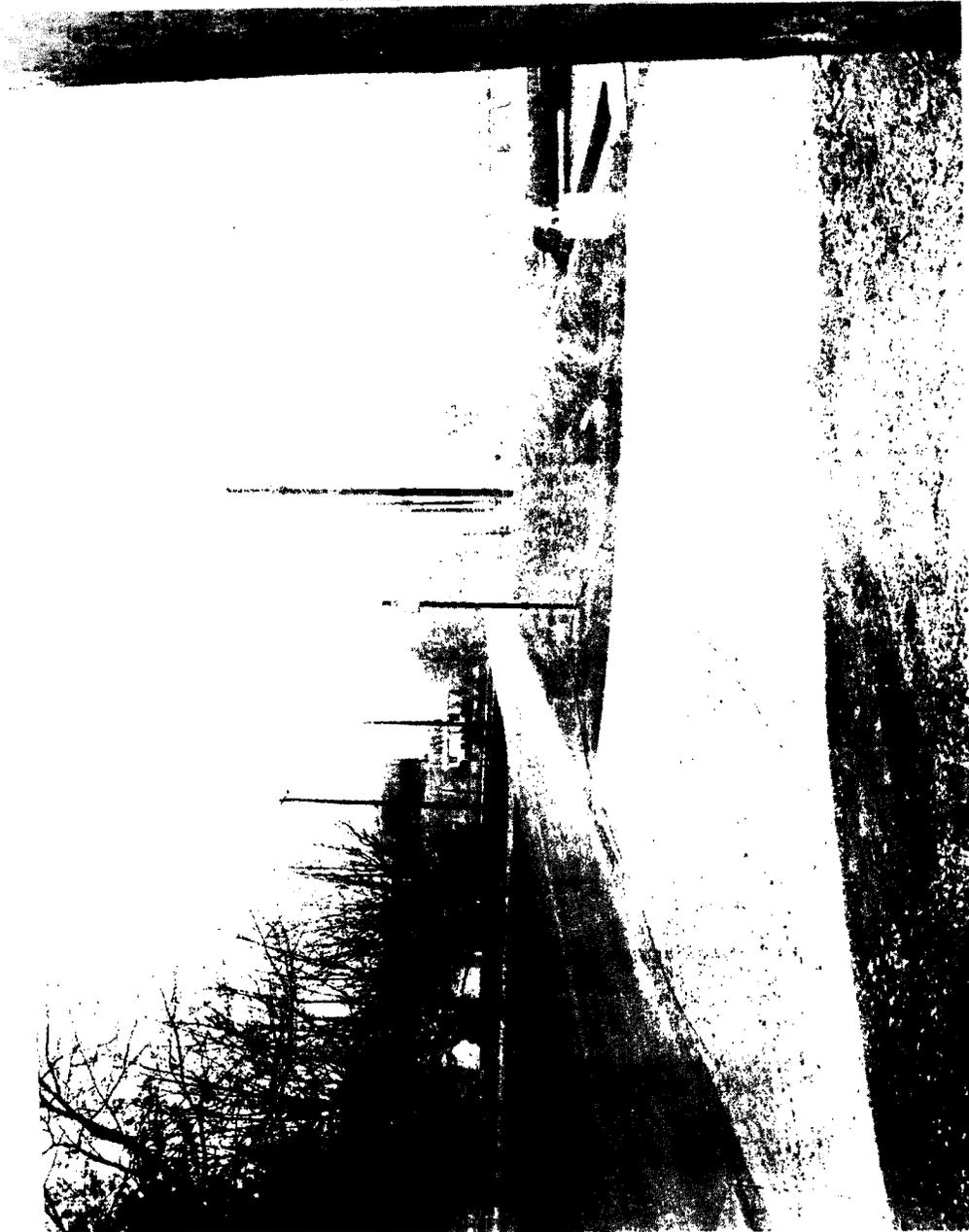
THE COURT: Gentlemen, I have already outlined that you will give us briefs within a 10 day period. The testimony will be transcribed later.

I hereby certify that the foregoing is a true and correct transcript of testimony taken in the within matter on the date therein set forth.

January 28, 1966.

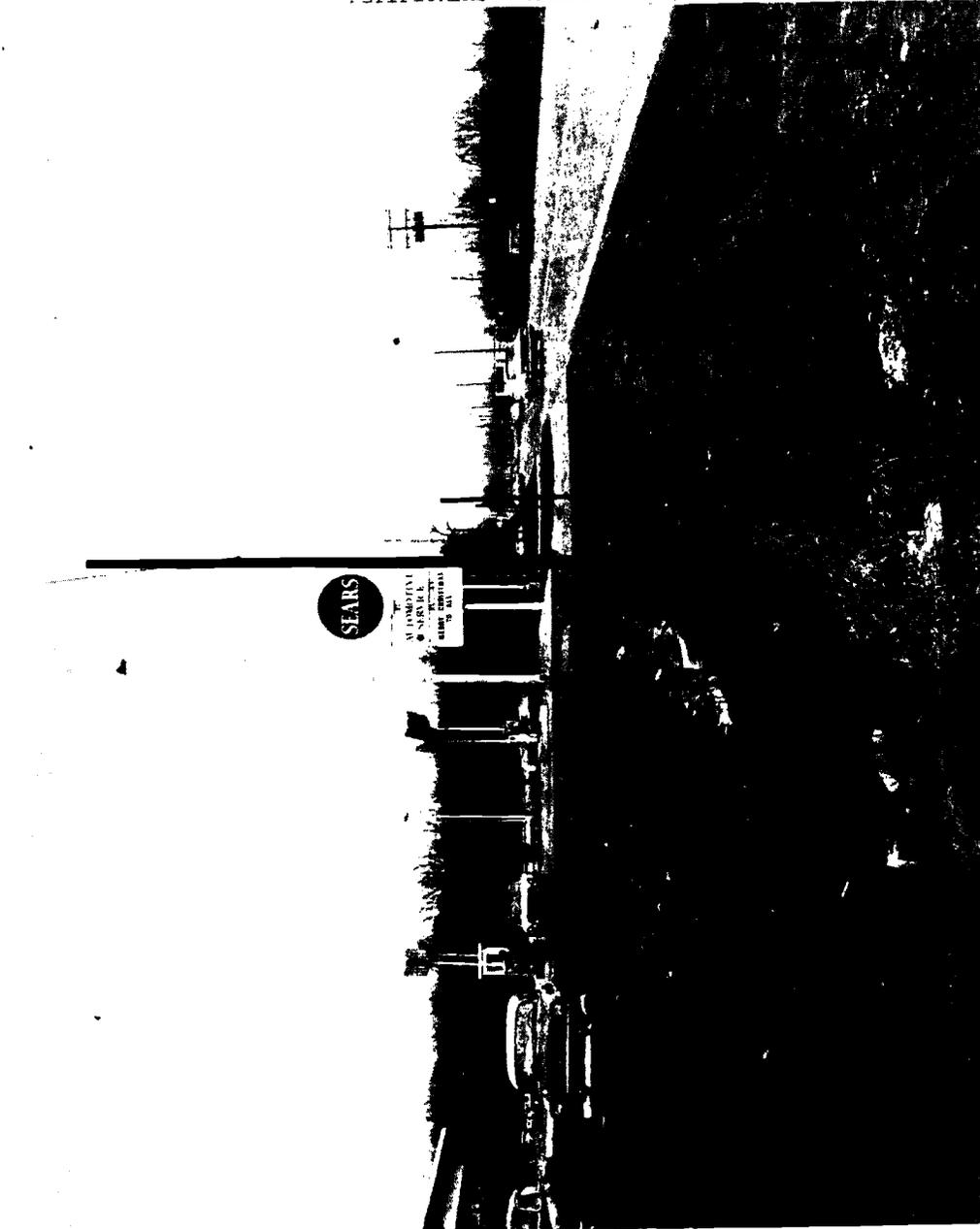
Catherine M. Barr,
Official Court Reporter.







PETITIONERS' EXHIBIT NO. 4

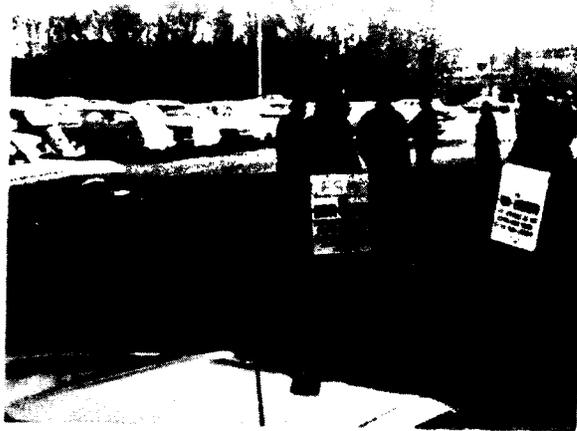


PETITIONERS' EXHIBIT NO. 5



DEC 25

PETITIONERS' EXHIBIT NO. 6



DEC 26

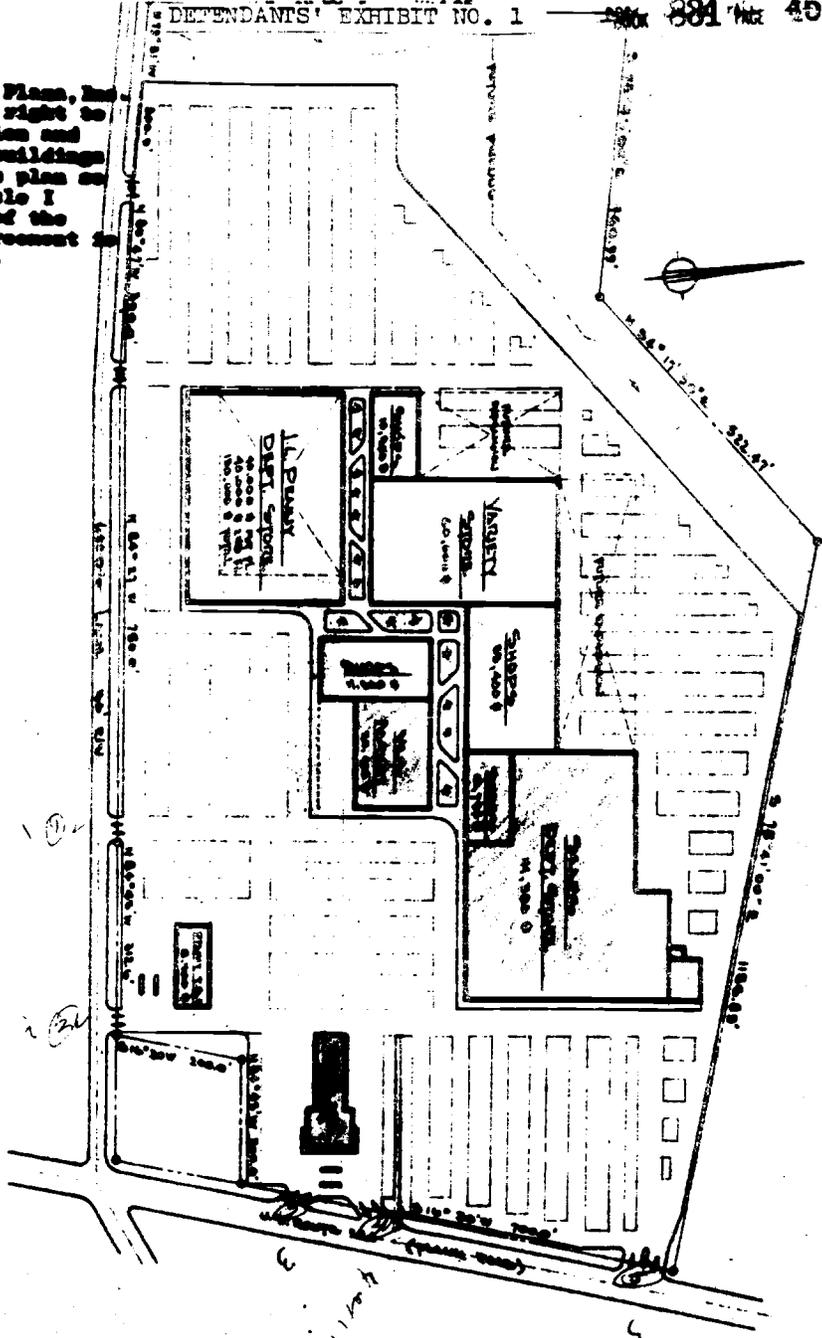
PETITIONERS' EXHIBIT NO. 7



DEC 68 •

Logan Valley Plans, Inc. reserves the right to change location and size of the buildings shown on this plan so long as Article I Paragraph C of the foregoing agreement is not violated.

P.M.
Sw



LOGAN VALLEY MALL
 PLANK ROAD AT GROSS LINE ALTOONA, PA.
 DEVELOPER:
 STEPHEN J. BRILLIARD - PAUN REALTY
 411 LINCOLN STREET, JOHNSTOWN, PA.
 CONSTRUCTION COMPANY:
 THE ROAD TO PROGRESS, INC.
 JOHNSTOWN, PA. 15704-1000 3-11-88

Exhibit "C"

Opinion

V.

OPINION

The narrow dispute to be resolved in this proceeding is the authority of this Court to restrict the place where union picketing of a non-union business establishment may be conducted.

PLEADINGS

The pleadings in this case consist of the following:

(a) Plaintiffs' Complaint, with Bond and Affidavits, seeking injunctive relief prohibiting picketing and alleged trespassing on plaintiffs' property and limiting picketing to certain highway berms adjacent thereto; and

(b) Defendant union's motion for dissolution or modification of the preliminary injunction heretofore granted.

FINDINGS OF FACT

(1) Plaintiff Logan Valley Plaza, Inc. is the owner of a newly-developed and sizeable commercial complex—a shopping center—known as the Logan Valley Mall, which is situate in Logan Township at the intersection of those public highways known as Plank Road (U. S. Route 220) to the east and Goods Lane to the south.

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(2) Separating the Mall from these respective highways are earthen berms at least 10 feet in average width, unbroken except for several paved entrances and exits providing ingress and egress between said highways and the Mall.

(3) Plaintiff Weis Markets, Inc. is the lessee and sole occupant of one of the only two businesses presently open and operating in the Mall (the other being a nearby Sears department store and automobile service enterprise, which is not a party to this proceeding).

(4) The Weis supermarket area proper consists of an enclosed modern market building with an open but covered porch running north and south along its front and a pick-up zone along the porch for the loading of meats and groceries into customer automobiles.

(5) Between this supermarket area and the highway berms aforesaid are extensive parking lots to the east and south of Weis; these macadam lots separate the supermarket from the berms by hundreds of feet, are constructed on the Mall premises and have parking spaces and driveways distinctively lined off on the ground. These areas constitute connecting lots or a common parking lot for Weis and Sears customers, and eventually for other shops and stores in the Mall as they open, and consequently these lessees may be said to have reciprocal rights or easements therein for the use of their business invitees and employees.

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(6) On December 8, 1965 plaintiff Weis Markets, Inc. opened for business, employing a wholly non-union staff of employees.

(7) Commencing on December 17, 1965 defendant union through its representatives, none of whom are employees of either plaintiff, engaged with continuity in the following acts of picketing on the Mall premises, inter alia:

(a) small groups of men and women wearing placards reading "Weis Mkt is Non-Union these employees are not receiving union wages or other union benefits" walked back and forth in front of the Weis supermarket, more particularly in the pick-up zone adjacent to the covered porch;

(b) occasional picketing as above described has taken place on the covered porch itself;

(c) handbills have been distributed to members of the public (actual or prospective Weis customers) by said pickets containing more detailed information of the same nature as that on the placards, but also including the following urgings: "We appeal to our friends and members of organized labor NOT TO PATRONIZE this non-union market" . . . "Please Patronize Union Markets! A & P—QUAKER—ACME" . . . "We still retain the right to ask the public NOT to patronize non-union markets and the public has the right NOT TO PATRONIZE non-union markets."

(8) While such picketing has been persisted in and may have infrequently caused temporary con-

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gestion near the supermarket entrances or sporadic stoppage of the flow of vehicles in the pick up zone, and while the pickets refused a request by the Assistant General Superintendent for Weis Markets to move off of the Mall proper, the picketing has been peaceful and unaccompanied by either oral threats or actual violence.

(9) Neither plaintiff Logan Valley Plaza, Inc. nor Sears are parties to a labor dispute nor involved in any labor trouble.

(10) On December 27, 1965 we approved plaintiffs' Bond and issued a preliminary injunction restraining defendants from picketing on the supermarket porch, in the pick-up zone, on the Mall parking lot areas or the entrances thereto and the exits therefrom.

(11) On January 4, 1966 hearing was held and testimony taken before this Court on plaintiffs' motion to continue the injunction.

ISSUE

Should the preliminary injunction be dissolved on the basis that we have no authority to preclude picketing on quasi-public property?

DISCUSSION

We need involve ourselves in no detailed discussion of our jurisdiction and power to regulate the location of picketing of the type here engaged in so as to prevent trespassing on private property; defendant union concedes such authority, which is supported by the case law of this Commonwealth.

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See *Weis Markets Inc. v. Local 195, AFL-CIO*, 34 D. & C. 2d 700 (1964); *Bloomsburg Mills, Inc. v. Textile Workers Union, Local 667*, 78 D. & C. 549, 41 Luz. L. Reg. 53 (1950). A number of unreported cases decided within the past several years—all *Weis Markets, Inc. v. Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 195, AFL-CIO et al.*—in Berks, Dauphin, Lancaster, Lebanon, Montgomery and York Counties have been brought to our attention and demonstrate how firmly settled this principle is in preservation of the sanctity of privately-owned property.

The defendant union argues, however, that the rule finds no application in the instant matter because a shopping center constitutes quasi-public property and, therefore, picketing on the Mall premises is not a trespass, but merely a lawful exercise of the constitutional right of free speech. The cases cited as controlling authority for this distinction are *Great Leopard Market Corporation, Inc. v. Amalgamated Meat Cutters and Butcher Workmen of North America, Local 196*, 196 A. 2d 657, 413 Pa. 143 (1964); *Weis Markets, Inc. v. Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 195, AFL-CIO et al.*, Equity Docket No. 13, C.C.P. Lancaster Co. (1964); and *Weis Markets Inc. v. Local 195, AFL-CIO*, *supra*.

While the Great Leopard Case did deal with the picketing of a store fronting on a parking lot both of which were situate in a shopping center, our Supreme Court holding that peaceful picketing was

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permissible in front and to the rear of the store, it seems significant that the pickets were all striking employees of the plaintiff store itself; a distinguishing feature in the case before us is that all of the pickets are strangers, non-employees of the plaintiff store, none of whose workers are out on strike. There the Foodarama market was involved in labor trouble; here the Weis supermarket is not engaged in labor trouble. Logic and reason would therefore dictate that the interests of the pickets in the Great Leopard Case were so directly and vitally related to the store itself that they cannot properly be labeled trespassers. Secondly, nothing in the Great Leopard Case clearly shows that an equally suitable area outside of the shopping center but in the immediate vicinity thereof existed which could be effectively utilized as a situs for picketing; in the present case, however, plaintiffs have affirmatively shown that access to the subject property may be had only from the two highways hereinbefore described and that both have berms of sufficient width appropriate to accommodate pickets.

As for the proceeding to Equity Docket No. 13, C.C.P. Lancaster Co., its total inapplicability to the defense contention is obvious when we compare both the relative locations there prevailing and the relief therein requested with the building area and the prayer of the complaint before us here. There the Weis supermarket in the Manor Shopping Center fronted on a concrete sidewalk running along the western edge of a public highway known as

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Lititz Pike. It is clear that this public sidewalk is the "walk area" referred to by the court decree limiting the total number of pickets at any one time to a maximum of 5, as follows:

"(e) Three (3) of the aforesaid pickets may picket on the curb line of the walk area immediately in front of the Weis Market Building and may not be less than ten (10) feet apart.

(f) The remaining two (2) pickets may be placed by the defendants as they choose in the vicinity of the Weis Market building, but may not be on the walk area and shall be the same distance of ten (10) feet apart from each other as well as the other three (3) aforesaid pickets."

Whether the Weis parking lot in that case was situate to the side of the supermarket or whether it intervened between the front of the supermarket and the concrete public sidewalk does not appear from the complaint, but this is immaterial. It is obvious that the "walk area" was neither a part of the Weis supermarket proper nor on the shopping center premises whatsoever, but rather occupied a location essentially the same as the highway berms in the present case; that is to say, the "walk area" was a boundary of and immediately outside the shopping center, separating it from the highway called Lititz Pike. We do not interpret that part of the decree allowing 2 pickets to be placed "in the vicinity of the Weis Market building" as permitting limited picketing either on the super-

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market porch or in the adjoining parking lot; our belief is that it means they shall picket off the premises anywhere beyond the public sidewalk. Even should defendant union's unsupported inference have merit, that either or both paragraphs (e) and/or (f) of the decree above-cited sanction picketing on the shopping center premises, the answer is that such paragraphs are verbatim wording of paragraphs (j) and (k), respectively, of the relief requested in the complaint; in this event the inescapable observation would be that plaintiff there was not trying to exclude picketing from the shopping center, and if such an issue was not involved, the case is inapposite to the situation now ours for disposition.

Defendant relies upon the dictum at p. 703 of *Weis Markets Inc. v. Local 195, AFL-CIO*, *supra*, wherein the opinion comments that other jurisdictions as well as Pennsylvania (in the Great Leopard Case) have determined that unions may enter upon shopping center premises for purposes of picketing business establishments located therein because of the quasi-public nature of such premises. We have already distinguished the Great Leopard Case from the particular facts in the instant case and, absent controlling appellate direction in our own Courts, we need not bow to the authority of decisions from sister-states when the wisdom of their rulings is debatable. We would point out to defendant the words following thereafter at pp. 703-04:

“Defendants argue that plaintiff has invited the public generally to enter upon its proper-

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ty. . . . The fault in this argument is that plaintiff has invited the public to enter upon its property, park their automobiles and shop in the store. *There is no direct or implied invitation to anyone to enter upon the property for the purpose of driving prospective customers away.* * * *

* * * If defendants were to be permitted on plaintiff's property for peaceful picketing purposes, it would be no different than to claim that a civil rights group had the right to hold a demonstration or a rally on plaintiff's property, or a political rally, or a religious service, or a dance, or an athletic contest, or any other public gathering. In our judgment its rights of private property were not relinquished or destroyed when plaintiff constructed its store and paved the remainder of its land for a parking area. Simply stated, it is our opinion that no one has a right to go on plaintiff's property except those who it invites, specifically or by implication, and defendants were not only not invited but were requested to leave." (Emphasis added.)

While we are in complete accord with the above-cited observation of Judge Johnstone relative to private property, we fail to see why it should not have equal force relative to shopping centers. Such a commercial premises may properly be classified as quasi-public only for the use of lessees, employees and business invitees, and those not falling within either group are not upon the premises for the pur-

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poses for which the enterprise was constructed and intended. Pickets should be precluded from arguing successfully the quasi-public nature of the Mall unless they can demonstrate their inclusion within those classes of the public expressly or impliedly invited to use the shopping center property. To us the very employment of the term "quasi-public" by the defendant manifests its full realization that the invitation is limited or qualified, and not extended to the whole general public as such regardless of purpose. Would the defense seriously contend that one has the right to park his vehicle on the Mall parking lot in order to shop at a store located off of the Mall premises? To argue that such action does not constitute a trespass would be ridiculous. The pickets in this case are certainly in no better position, to say the least.

It is unnecessary for us to base our decision solely on the ground of trespass to realty, however. Regardless of this question, we entertain no doubt that we do not have the right totally to prohibit the picketing of the Weis supermarket, but we are invested with authority to balance the equitable considerations and to impose reasonable controls, which is all that plaintiffs seek by their complaint. Cf. *Flashner v. Amalgamated Meat Cutters & Butcher Workmen of North America, Local 195, Etc.*, 37 D. & C. 337 (1939). The nature of the handbills which have been distributed borders on conduct evidencing a "course of conduct intended or calculated to coerce an employer to compel or require his employees to . . . become members of or otherwise

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join [defendant] labor organization'', in which case the picketing, although peaceful, is for an unlawful purpose. See the Labor Anti-Injunction Act of 1937, June 2, P. L. 1198, Sec. 4(b) (as amended), 43 P.S. Sec. 206d(b); *Anchorage, Inc. v. Waiters & Waitresses Union, Local 301 et al.*, 119 A. 2d 199, 383 Pa. 547 (1956); *Flashner v. Amalgamated Meat Cutters & Butcher Workmen of North America, Local 195, Etc., supra*; *Twin Grill Company, Inc., et al. v. Local Joint Executive Board et al.*, 60 D. & C. 379 (1947). Even peaceful picketing, as here, may be unlawful because of the objective or end result which is sought.

The purpose of picketing is to exert stronger influences than those which may be accomplished by the employment of other modes of communication. When peaceful picketing is accompanied by the distribution of handbills of a strictly informative and factual nature, it is a proper exercise of the constitutional right of freedom of speech; it is quite another matter, however, when such handbills go beyond this stage and approach intimidation of that vulnerable segment of the public who may desist from patronizing plaintiff's establishment, not out of sympathy or agreement with defendant union's cause, but out of apprehension for individual well-being. Defendant may say that the handbills here involved merely appeal to and request shoppers to make their purchases elsewhere, but from the repeated emphasis "NOT TO PATRONIZE" it might well appear to the scanning recipient of one of these handbills that his or her right to choose is limited

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and that the notice is meant to serve as an implicit mandate or warning.

Not being specifically requested directly to restrict defendant union in the use of handbills we will refrain from so doing. We will, however, discourage whatever possibility of personal confrontation may otherwise exist by making permanent the injunction as previously decreed. By limiting the pickets to the highway berms we are not diminishing their ability to communicate with and inform the public, since there are no other means of vehicular adit to or exit from the Mall premises; we are thereby actually increasing their audience, for the placards or banners will be plainly legible to passing motorists on both highways. In addition, the berms are of sufficient width to serve as appropriate walkways without exposing the pickets to traffic perils—it would seem to us that greater danger to their physical welfare had existed in the Weis pick-up zone where they were in direct line of vehicular traffic, moving however slowly. They will be still in the vicinity and clearly within view of the Weis supermarket.

We rest our authority on the holding in *Wortex Mills, Inc. v. Textile Workers Union of America, C.I.O. et al.*, 85 A. 2d 851, 857, 369 Pa. 359, 369 (1952), wherein our Supreme Court summarized the case law on this point as follows:

“A STATE COURT MAY ENJOIN UNLAWFUL PICKETING OR PICKETING WHICH IS CONDUCTED IN AN UNLAW-