

RESIDENTIAL PICKETING OF SLUM LANDLORDS

In *Hibbs v. Neighborhood Organization to Rejuvenate Tenant Housing*,¹ the defendant organization picketed outside the plaintiff's residence to protest plaintiff's practice of renting houses in the low-income districts of Philadelphia without maintaining a rental office there, as well as his failure to provide vital services. The plaintiff had conducted his business using the assumed name of "Ben Reed."² He required tenants to send their rent payments and complaints by mail to a post office box in Bala Cynwyd, Pennsylvania.³ After a hearing, the trial court granted a preliminary injunction to restrain the picketing. On appeal, the Supreme Court of Pennsylvania reversed, stating:

When a landlord conducts his business in a manner to avoid detection and not at a regular place of business, informational picketing may not be enjoined for the sole reason that tenants and others resorted to picketing the landlord's home.⁴

The court thus held that tenants' peaceful and orderly picketing could not be enjoined solely because the situs of the picketing was the landowner's home. The court seemingly followed the majority of decisions in cases on this issue.

Picketing⁵ has been the source of much litigation over the years, but there are few cases directly in point with the one under discussion. Prior to the Supreme Court decision in *Thornhill v. Alabama*,⁶ which established picketing as a form of constitutionally protected free speech, there was at least one New York case similar to *Hibbs*, although the court reached a contrary result.⁷ Since 1960 there have been two

1. 433 Pa. 578, 252 A.2d 622 (1969).

2. The defendants apparently did not know plaintiff's real name or where he lived for an extended period of time. There is some indication that the defendants did not learn this information until they had decided to bring legal action against him. See Brief for Appellants at 1.

3. Bala Cynwyd, Pennsylvania is located in Montgomery County, adjoining the City of Philadelphia.

4. 433 Pa. at 580, 252 A.2d at 624.

5. As used in this paper, "picketing" refers to any form of the activity, while "residential picketing" is used to connote only the picketing of a person's home.

6. 310 U.S. 88 (1940).

7. *People v. Kopezak*, 153 Misc. 187, 274 N.Y.S. 629 (Ct. Spec. Sess. 1934), *aff'd*, 266 N.Y. 565, 195 N.E. 202 (1935). Tenants who picketed in front of their dwelling were charged with disorderly conduct and convicted. On appeal,

other New York cases which involved similar problems, the court in the most recent of these reaching basically the same result as the *Hibbs* court.⁸

In *Hibbs*, the Pennsylvania Supreme Court apparently followed the policy it had established in *1621, Inc. v. Wilson*.⁹ In that case neighborhood residents picketed the plaintiff's taproom protesting its opening and operation. Plaintiff sought a preliminary injunction which was denied in the lower court, and the supreme court of the state affirmed the order denying injunctive relief. In reaching its decision, the court held that the objective or purpose of the picketing is determinative and that the appellees' purpose "was to protect against an admitted nuisance in fact."¹⁰ The court concluded that there was a legitimate purpose for the picketing and, therefore, the activity could not be enjoined.¹¹

The court in *Hibbs* continued the *Wilson* policy of looking only to the picketers' objectives to determine whether an injunction should issue in cases where the picketing is done in an orderly and peaceful

the Court of Special Sessions affirmed, indicating that the tenants should have gone to the municipal authorities charged with protecting residents from poor housing conditions. Picketing was not constitutionally protected at the time this case was decided. It is doubtful that the same result would obtain today for two reasons. First, the disorderly conduct ordinance involved was apparently quite broad, leaving a great deal of discretion to the individual police officer, and thus it probably would not survive the test of constitutionality today. Secondly, if the ordinance did not make the picketing unlawful, the fact that it was peaceful and orderly and the fact that the tenants had legitimate complaints would cloak the picketing with constitutional protection.

8. *West Willow Realty Corp. v. Taylor*, 23 Misc. 2d 867, 198 N.Y.S.2d 196 (Sup. Ct. 1960); *Dicta Realty Associates v. Shaw*, 50 Misc. 2d 267, 270 N.Y.S.2d 342 (Sup. Ct. 1966). Lessee picketed in front of apartment complaining of excess noise, poor maintenance, and other conditions. Injunctive relief was denied, the court, at 270, having found that the picketing was "conducted in an orderly manner and ... there is no denial of the truth and accuracy of the placards nor is a monetary loss established by reason of the picketing." The court seems to be going in the back door here, finding that since the activity was not illegal, the purpose or objective of the picketing is therefore legitimate and cannot be enjoined.

9. 402 Pa. 94, 166 A.2d 271 (1960).

10. *Id.* at 108, 166 A.2d at 278.

11. The fact that the court found a nuisance in *Wilson* is not meaningful to the *Hibbs* case. The important aspect of *Wilson*, with respect to the *Hibbs* decision, is the test of legality used by the court, i.e., the legality of the objective or purpose of the picketing, as well as whether it was peaceful and orderly.

PICKETING OF SLUM LANDLORDS

manner.¹² In so doing, the court extended the policy to include residential picketing, at least in cases where there is no other means of communication between the tenants and their landlord. The *Hibbs* court cited only one case, *Gregory v. City of Chicago*,¹³ which it apparently thought justified the extension.

In the *Gregory* case, comedian Dick Gregory led a group of demonstrators to the home of Chicago Mayor Richard Daley, where they engaged in peaceful and orderly picketing of his home.¹⁴ A large group of spectators gathered. When the onlookers became rowdy and boisterous, the police told the picketers to disperse. The demonstrators refused to leave and were arrested for disorderly conduct. Gregory was convicted in the lower court and the decision was affirmed in the Illinois Supreme Court. The United States Supreme Court reversed the decision, holding that the conduct was protected by the first amendment. The important aspect of the case was that it did not distinguish between residential and non-residential picketing.¹⁵

The *Hibbs* court specifically refrained from laying down a blanket rule permitting residential picketing, but this does not mean that it will not do so in the future.¹⁶ Justice Roberts, in a short concurring opinion, seemed to indicate that the court might consider laying down such a blanket rule when he stated:

[T]he question of to what extent purely residential picketing may be proscribed is not before us. Thus while the majority opinion correctly holds that residential picketing is permissible where no other alternative is available, it should *not* be read as authority for the converse proposition, i.e., that residential pick-

12. The types of "purposes or objectives" that courts will accept as legal or legitimate cannot be enumerated. It would seem, however, that if the picketing is peaceful and orderly, a well-defined, constitutional need must be shown before the picketing can be constitutionally restrained.

13. 394 U.S. 111 (1969).

14. The basic reason for the picketing was to press claims for desegregation of public schools.

15. The failure of the Court to distinguish between residential and non-residential picketing is the important aspect of the *Gregory* decision vis-a-vis *Hibbs*. There are certainly other important details in the case, but they are not necessarily related to the *Hibbs* decision.

16. The court stated that this was not a true case of residential picketing because there was no other place available where the appellants could effectively communicate, and therefore the question of a blanket rule was not properly before them. Perhaps another important reason why the court did not decide the question was the fact that appellee did not submit a brief or participate in oral argument. 433 Pa. at 580-81, 252 A.2d at 623.

eting may be enjoined merely if another nonresidential picketing situs can be effectively utilized.¹⁷

That picketing is not entitled to the same degree of constitutional protection as pure speech, was demonstrated in *Cox v. Louisiana*¹⁸ when the Supreme Court stated:

We emphatically reject the notion urged by appellant that the First and Fourteenth amendments afford the same kind of freedom to those who would communicate by conduct such as patrolling, marching, and picketing on streets and highways, as these amendments afford to those who communicate ideas by pure speech.¹⁹

Picketing is thus open to government regulation.²⁰ Apparently, residential picketing is not subject to any greater limitation or regulation than other forms of picketing.²¹

Legislatures typically regulate activities such as picketing²² and commentators have argued that residential picketing in particular should be controlled.²³ However, there are so few means of combating a "slumlord's" business practices that there may be a real need for residential picketing. In the absence of legislation, the Pennsylvania Supreme Court has taken the position that there is no distinction between residential and non-residential picketing and that the same test of legality is to be applied to each: the legitimacy and legality of the picketers' objective or purpose. The decision is sound in that it recognizes that many "slumlords" will remain away from a particular jurisdiction where they rent slum housing so as to avoid hearing complaints, to avoid being served with housing authority orders, and to avoid detection generally. Apparently it is also a common practice for

17. *Id.* at 581, 252 A.2d at 624.

18. 379 U.S. 536 (1965).

19. *Id.* at 555.

20. Governmental regulation must be embodied in a very narrowly drawn statute. See *Cox v. Louisiana*, 379 U.S. 559 (1965).

21. See *Gregory v. City of Chicago*, 394 U.S. 111 (1969). At 112, the Court stated: "Petitioners' conduct, if peaceful and orderly, falls well within the sphere of conduct protected by the First Amendment."

22. Several states have enacted such legislation. The following is a list of just a few: CONN. GEN. STAT. REV. § 31-120 (1958); HAWAII REV. LAWS ¶ 300-1 (1965); WIS. STAT. § 111.06(2) (a) (1963).

23. See Kamin, *Residential Picketing and the First Amendment*, 61 NW. U.L. REV. 177 (1966); Note, *Picketing the Homes of Public Officials*, 34 U. CHI. L. REV. 106 (1966).

PICKETING OF SLUM LANDLORDS

individuals who rent slum housing permanently to stay outside the jurisdiction of the courts enforcing the housing codes.²⁴ Residential picketing provides an effective means of publicizing these practices of slum landlords.

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24. *See* Brief for Appellants at 2, *Hibbs v. Neighborhood Organization to Rejuvenate Tenant Housing*, 433 Pa. 578, 252 A.2d 622 (1969).