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**The Criminalization of
Labor Law Violations**

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The Criminalization of Labor Law Violations

I. Historical Prospective

1648 Cobblers and coopers (shoemakers and barrel-makers) in Boston were the first groups of workers to organize. The groups were not called unions, rather “combinations.”

1746 First known case of criminal prosecution related to labor. During the Colonial Era, a number of carpenters in Savannah, Georgia were criminally prosecuted because they organized a strike.

1840 **Commonwealth v. Hunt**, 45 Mass. 111 – Massachusetts Supreme Judicial Court

Members of the Boston Journeymen Bootmaker’s Society, founded in 1835 and local to Boston, worked exclusively on high-quality boots. In 1835, in response to rampant inflation caused by Andrew Jackson’s destruction of the Bank of the United States and the corresponding increase in the cost of living, the society raised their pay, by means of striking, to \$1.75 per pair of boots produced. In 1836, they staged another strike, this time successfully raising their pay to \$2.00 per pair. Their rates remained the same in 1840, when the incidents giving rise to *Hunt* occurred. However, by that time increases in the quality of the boots being produced prevented the bootmakers from producing pairs as quickly, essentially lowering their hourly rate in the midst of a severe economic downturn.¹

One journeyman bootworker, Jeremiah Horne, was in a dispute with the Society. Horne began to have disagreements with the Society when he agreed to do extra work on a pair of boots without charging for the extra labor. The Society imposed a fine on Horne, which he refused to pay. Ultimately the fine was forgiven when Horne’s employer, Isaac Wait, agreed to pay Horne for the work at the Society-fixed rate. Horne nevertheless continued to breach the Society’s rules, and soon had incurred another \$7 in fees. The Society demanded that he pay. When Horne refused, the Society threatened a walkout of Mr. Wait’s shop and Wait fired him.²

Horne responded by entering a complaint with the Suffolk County Attorney, and by sending his cousin, Dennis, who was also a member of the Society, to try to reach a settlement with them. Dennis attended a Society meeting in early October 1840, but was ridiculed and stormed out. A few days later, on

¹ Nelles, Walter (1932), “*Commonwealth v. Hunt*”, Columbia Law Review; Tomlins, Christopher L. (1993), *Law, Labor, and Ideology in the Early American Republic*, Cambridge University Press; Wikipedia Contributors, *Commonwealth v. Hunt*, October 5, 2016.

² *Id.*

October 8, an indictment was entered charging that the Society was a criminal conspiracy to impoverish employers and non-union laborers. Seven members of the Society were named as defendants. Although there was no evidence that the Society planned to strike or that there was any large-scale disagreement between employers and the Society, the County Attorney decided to take the case. The trial began on October 14 and ended on October 22, 1840.³

At trial, all seven defendants were convicted. The case was appealed to the Supreme Judicial Court of Massachusetts. In an opinion by Chief Justice Lemuel Shaw, the Court reversed the convictions and held that labor combinations were legal provided that they were organized for a legal purpose and used legal means to achieve their goals. The Court concluded:

We think, therefore, that associations may be entered into, the object of which is to adopt measures that may have a tendency to impoverish another, that is, to diminish his gains and profits, and yet so far from being criminal or unlawful, the object may be highly meritorious and public spirited. The legality of such an association will therefore depend upon the means to be used for its accomplishment. If it is to be carried into effect by fair or honorable and lawful means, it is, to say the least, innocent; if by falsehood or force, it may be stamped with the character of conspiracy. It follows as a necessary consequence, that if criminal and indictable, it is so by reason of the criminal means intended to be employed for its accomplishment; and as a further legal consequence, that as the criminality will depend on the means, those means must be stated in the indictment. If the same rule were to prevail in criminal, which holds in civil proceedings—that a case defectively stated may be aided by a verdict—then a court might presume, after verdict, that the indictment was supported by proof of criminal or unlawful means to effect the object. But it is an established rule in criminal cases, that the indictment must state a complete indictable offence, and cannot be aided by the proof offered at the trial.⁴

II. Memorandum of Understanding Between The U.S. Departments of Labor and Justice on Prosecution of Worker Safety Laws
December 17, 2015

Today, the criminal prosecution of Federal labor laws, specifically worker safety laws, is guided by a Memorandum of Understanding Between The U.S. Departments of Labor and Justice. This Memorandum of Understanding was executed on December 17, 2015. The stated

³ Id.

⁴ 45 Mass. 111

purpose of the Memorandum of Understanding is “*to provide coordination of matters pertaining to worker safety that could lead to criminal prosecution by DOJ ... and to establish a process and framework for notification, consultation and coordination between DOL and DOJ to aid both agencies in more effectively implementing our national workplace statutes.*”⁵ A copy of the Memorandum is attached.

The Memorandum of Understanding lays out the general principles of coordination and cooperation between the two Departments, as well as the primary points of contact. It also provides for the full sharing of information from the Department of Labor, as well as the protection of confidential and sensitive information by the Department of Justice.

The Memorandum only expressly deals with criminal prosecution of three worker safety laws:

1. The Occupational Safety and Health Act (OSHA);
2. The Federal Mine Safety and Health Act (MSHA); and
3. The Migrant and Seasonal Agricultural Worker Protection Act (MSPA).

Under both the OSHA and the Mine Safety and Health Act, criminal charges are only available for three types of conduct:

1. Willfully violating a specific standard that causes the death of an employee;
2. Giving advance notice of either an OSHA or MSHA inspection activity; or
3. Falsifying documents that are required to be filed or to be maintained under each Act.⁶

⁵ Memorandum of Understanding Between The U.S. Departments of Labor and Justice on Prosecution of Worker Safety Laws, December 17, 2015.

⁶ Id.

Under the Migrant and Seasonal Agricultural Worker Protection Act, criminal charges may be issued for a willful or knowing violation of the Act, or any regulation under the Act.

On a somewhat related front, the U.S. Department of Labor’s Office of Labor-Management Standards (OLMS) also conducts both civil and criminal investigations of alleged violations of the Labor-Management Reporting and Disclosure Act and related laws. These investigations by OLMS District Offices involve issues such as embezzlements of union funds, union officer elections, the filing of required reports by unions and others with OLMS, and the imposition of trusteeships over subordinate unions by a parent body. The summary of OLMS criminal indictments vs. convictions for the past two decades are in the chart below.

**Indictments and Convictions
Fiscal Year 1998 – Fiscal Year 2016**

Indictments		Convictions*	
FY2016	93	FY2016	87
FY2015	83	FY2015	68
FY2014	95	FY2014	100
FY2013	97	FY2013	116
FY2012	121	FY2012	121
FY2011	145	FY2011	116
FY2010	129	FY2010	130
FY2009	123	FY2009	121
FY2008	131	FY2008	103
FY2007	100	FY2007	118
FY2006	121	FY2006	133
FY2005	115	FY2005	97
FY2004	110	FY2004	111
FY2003	131	FY2003	152
FY2002	166	FY2002	89
FY2001	99	FY2001	102
FY2000	204	FY2000	191

FY1999	118	FY1999	131
FY1998	143	FY1998	130

More detailed summary reports of the criminal prosecutions by OLMS for embezzlement and theft by union officials can be found online on the Department of Labor website:

https://www.dol.gov/olms/regs/compliance/enforcement_1.htm

III. The Occupational Safety and Health Act of 1970 (OSHA)

IV. Michigan Occupational Safety and Health Act-MIOSHA

V. The Mine Safety and Health Act of 1977 (MSHA)

VI. Federal Wage and Hour Law Prosecutions

United States v. Palumbo Brothers, Inc., et al. 1996

U. S. District Court, Northern District of Illinois

U.S. Court of Appeals for the Seventh Circuit – 143 F.3d 850 (1998)

Key Points The Seventh Circuit, in reversing the criminal defendants' motion to dismiss the numerous charges, held that: 1) Federal labor laws can never preempt a criminal prosecution; and 2) Civil sanctions imposed to remedy unfair labor practices are not adequate substitutions for the criminal penalties available under RICO, the mail fraud statute, and ERISA.

Facts Palumbo Brothers Inc., one of Illinois' oldest and largest road builders, was indicted in 1996 on charges of fraudulently over billing \$20 million on dozens of road projects from 1985. Also charged with racketeering in the 47-count federal indictment were the construction firm's owners: Peter Palumbo, and his sons Joseph and Sebastian. The indictment accused the 100-year-old corporation, a related company and the three Palumbos, with repeatedly billing for, but short-changing state, federal and local governments of tons of crushed stone and other materials used in road-building.

The Palumbos were also individually charged with failing to pay employees for overtime work and underpaying required contributions to the Teamsters and Laborers union pension funds. That part of the scam cost 900 workers about \$3.3 million in lost pay and benefits, according to prosecutors' estimates.⁷ The specific criminal charges related to the labor law claims were mail fraud and racketeering under RICO.

The Palumbos succeeded on a motion to dismiss 37 of criminal charges related to the labor law violations by arguing that the criminal prosecution of unfair labor activities is inconsistent with labor policy, thus the indictment was defective. The Seventh Circuit reversed the lower court. The Court held that:

In the present case, it is inconsequential that the United States incidentally implicates breaches of the collective bargaining agreements when it charges the defendants with alleged criminal offenses, because the purpose of the indictment is NOT to remedy a labor dispute, but to prosecute alleged criminal conduct. In addition, a criminal prosecution does not threaten or impair labor policy. Even though unfair labor practices may be implicated by the alleged criminal activities, those unlawful labor activities are merely collateral to the alleged criminal activities which are the subject of the indictment and the focus of the government's prosecution. 145 F.3d 850, 872.

A copy of the Seventh Circuit's decision is attached.

After remand, all three Palumbos pleaded guilty. Peter Palumbo spent 10 months in Federal prison, while each son spent 19 months in prison.

⁷ Chicago Tribune, April 24, 2001, "After Jail, Palumbos Find Road To Success"

United States v. Naranjo 2013

U. S. District Court, Southern District of New York

Civil case Enviro & Demo Masters, Inc. and Gladiators Contracting Corp., along with the companies' owner Jover Naranjo and foreman Luperio Naranjo Sr., were ordered to pay a total of \$656,646 to 37 workers after failing to pay them the required prevailing wage rates and fringe benefits on a Federally-funded construction project in New York City. Due to the extent and willful nature of the violations, all parties were debarred from seeking and obtaining Federal contracts for a three-year period.

The two companies were subcontractors performing demolition work on the construction of the Hobbs Court and Ciena projects, two federally-funded affordable housing developments in East Harlem. The Hobbs and Ciena projects were part of the Metro North Rehabilitation and Redevelopment Program, which was funded in part by the U.S. Department of Housing and Urban Development under the American Recovery and Reinvestment Act of 2009.

An investigation by the Wage and Hour Division found that Enviro & Demo Masters falsified certified payroll records by deliberately omitting employees from the payroll, instead listing family members who performed no work on the projects and listing wage rates that were not paid to workers. The company also failed to pay 37 workers the prevailing wage rates for their particular job classifications and failed to pay the workers overtime rates for all hours worked above 40 in a workweek.⁸

Criminal case Company owner Jover Naranjo and foreman Luperio Naranjo, Sr. were indicted on May 13, 2013 on six criminal charges, including conspiracy to commit mail fraud, mail fraud, conspiracy to commit witness tampering, witness tampering, filing of false statements and aggravated identity theft. They were convicted after a jury trial in November 2013. They were sentenced to six years and four years in prison respectively, and ordered to pay restitution. A copy of the original criminal indictment is attached.

⁸ United State Department of Labor News Release, May 22, 2014, Release Number 12-0871-BOS.

United States v. Lampignano 2016
U. S. District Court, Northern District of Illinois

Joseph Lampignano, a co-owner of A Lamp Concrete Contractors, Inc. was charged with intentionally underpaying his union-affiliated employees by more than \$1.5 million while underfunding their pension and welfare funds by another \$1 million. He was charged with one count of mail fraud.

Lampignano assigned laborers to work on government-funded road construction projects without paying the union-negotiated wage rate. From approximately 2008 to 2013, Lampignano violated collectively bargained agreements with the laborers' union by failing to pay the union wage rate to certain laborers, underpaying them by a total of more than \$1.5 million. Over the same time period, Lampignano also submitted false reports to the unions' pension and welfare funds that underreported the number of hours worked by certain laborers, thereby lowering the amount of contributions that A Lamp was required to make to the funds on behalf of its employees. The shortfall to the funds totaled more than \$1 million.⁹

A copy of the criminal information is attached.

The same criminal information also described a scheme in which Lampignano and his superintendent, Giovanni "John" Traversa, induced employees to re-pay a portion of settlement proceeds they received from the company in resolution of a prior civil lawsuit. In 2013, A Lamp paid a total of \$545,357 to 24 employees to satisfy unpaid wages and resolve the suit brought by the union. Subsequent to paying the settlement funds, Lampignano, Traversa and others used their positions of authority to induce certain laborers to pay some of the money back to the company. Several employees eventually kicked back a total of at least \$64,000. Traversa was charged with one count of making false statements to the Federal Bureau of Investigation and the U.S. Department of Labor Office of Inspector General regarding the settlement kickbacks.

On June 3, 2016, Lampignano and Traversa pleaded guilty to the pending charges. On January 17, 2017, Judge Sara L. Ellis sentenced Lampignano to 10 months in Federal prison, followed by one year of court supervision. He was also ordered to pay a fine of \$46,000 and to pay \$64,000 in restitution to workers from whom he sought kickbacks after settling a prior lawsuit over back wages.¹⁰

⁹ U.S. Department of Justice, United States Attorney, Northern District of Illinois Press Release, May 18, 2016.

¹⁰ Riverside-Brookfield Landmark News, February 7, 2017, www.rblandmark.com.

VII. State Wage and Hour Law Violations

Prosecution of wage and hour violations are not limited to just the Federal courts. We have found multiple examples of prosecutions by states' attorney generals and local district attorneys.

A. Michigan Prevailing Wage Act and Criminal Liability

B. New York Prevailing Wage Law

New York's prevailing wage law is found at Section 220 of the New York Labor Law. The prevailing rate of wages and supplements are determined annually on July 1 of each year and are effective through June 30 of the following year. Labor Law §220(5)(A). Prevailing rates in a locality are determined by virtue of collective bargaining agreements between bona fide labor organizations and employers of the private sector, provided that said employers employ at least 30% of workers in the same trade or occupation in the locality where the work is being performed. Labor Law §220(5)(A). In New York, the failure to pay Prevailing Wages and Benefits can either be a class A misdemeanor (Labor Law §220(3)(d)(i)(1)) or a class E felony (Labor Law §220(3)(d)(i)(2)) depending upon the circumstances of the case.

New York Attorney General Eric Schneiderman has undertaken several noteworthy non-payment of prevailing wage and minimum wage cases. Some of those cases include:

May 2017 – People v. Mangru – The NY Attorney General and the New York City Comptroller filed criminal charges against contractor Vickram Mangru alleging that he underpaid wages and benefits to workers on a publicly-funded New York City construction project. Mangru is charged with Failure to Pay the Prevailing Rate of Wage or Supplements and with five counts of Falsifying Business Records in the First degree—all felonies.

Contracted to perform work on several New York City Department of Education (NYCDOE) public schools in the Bronx between December 2012 and April 2014, Mangru – while doing business as Vick Construction out of Valley Stream, New York – was charged with allegedly cheating six workers out of \$301,683 in wages. Vick Construction and Mangru had previously

been debarred and banned for a five-year period from performing public work projects by the New York City Comptroller's Office for failing to pay proper prevailing wages to workers. In addition, between April 2014 and February 2015, Mangru is alleged to have continued working on multiple NYCDOE school projects in the Bronx in violation of the debarment. An investigation determined that Mangru, now operating under the umbrella of AVM Construction, allegedly failed to pay proper prevailing wages to ten workers on those school projects by an additional \$389,357 during the ten-month period.¹¹ The charges are currently pending against Mr. Mangru.

April 2016 – People v. Mian – The NY Attorney General announced the conviction and sentencing of Shamas Mian, 52, and his company United Construction Field, Inc., for failing to pay more than \$50,000 to masonry workers on an exterior renovation project at a Bronx public school from January 2012 through June 2012.

Mian pleaded guilty to one count of Failure to Pay Prevailing Wages and Benefits, a class E felony, and was sentenced to five years probation as well as debarment. United Construction Field, Inc., located in Brooklyn, NY, also pleaded guilty to one count of Failure to Pay Prevailing Wages and Benefits and was sentenced to a conditional discharge as well as debarment. Debarment prohibits both Mian and United from bidding on or being awarded any public work projects in the state of New York for five years.¹²

July 2015 – People v. Khokhar – The NY Attorney General, after an investigation by the U.S. Department of Labor, charged Abdul Jamil Khokhar and BMY Foods, Inc., who together owned and operated nine Papa John's franchises throughout the Bronx. Khokhar and the company failed to pay minimum wage and overtime to approximately 300 current and former employees; created fictitious identities to conceal overtime worked by employees; and filed fraudulent quarterly tax returns with New York State in order to cover up their alleged wage theft. Khokhar and BMY Foods, Inc. did not pay the overtime premium but rather paid workers the same, regular rate of pay for all hours worked, including hours in excess of 40. To hide this practice, they paid overtime hours in cash to avoid creating a record. They also allegedly created fictitious names for employees to use in their computerized timekeeping system, so once employees' weekly hours reached 35 or 40 per week, they were required to use the fictitious names so that the employer's failure to pay proper overtime for these hours would be concealed. Khokhar and BMY Foods Inc. made the cash payments under the fake names and kept separate paper records reflecting both the check and cash payments made to the same workers.¹³

In November 2015, Khokhar pleaded guilty in state court to a misdemeanor charge of failing to follow New York labor law and to a felony charge of filing false business records. Characterized as a "first-of-its-kind punishment", Khokhar was sentenced to 60 days in jail, he

¹¹ New York State Attorney General Press Release, May 3, 2017.

¹² New York State Attorney General Press Release, April 19, 2016.

¹³ New York State Attorney General Press Release, July 15, 2015.

agreed to pay \$230,000 in back wages and an additional \$280,000 in penalties and liquidated damages.¹⁴

September 2014 – People v. Bartiromo – Ronald Bartiromo, Raymond D’Auria and R3 Electrical Inc. were convicted of failing to pay prevailing wages on two public works projects at multiple locations in New York City. Bartiromo was the CEO of R3, and D’Auria was a project manager for the company. Bartiromo was aware that he was required to pay the prevailing wages but, with D’Auria’s assistance, paid hourly rates that were a fraction of the total required. In a scheme to avoid detection, Bartiromo filed false certified payroll reports stating he paid his workers the proper prevailing wages.

Bartiromo and R3 Electrical pleaded guilty to the felony crimes of failing to pay prevailing wages and grand larceny in the second degree, respectively. D’Auria ended up pleading guilty to the misdemeanor count of violation of prevailing wage requirements. As a condition of the pleas, Bartiromo and R3 Electrical agreed to pay \$273,943.66 in restitution to underpaid workers and are prohibited from working on public works projects for five years. Bartiromo was also sentenced to 5 years’ probation.¹⁵

VIII. Union and Labor Dispute Prosecutions

United States v. Douglas 2002

U. S. District Court, Eastern District of Michigan

U.S. Court of Appeals for the Sixth Circuit – 398 F.3d 407 (2005)

Donny Douglas was a representative of the United Auto Workers International and Jay Campbell was chairman of United Auto Workers Local 594 in Pontiac, Michigan – the location of a General Motors truck facility. In 1995, Douglas and Campbell asked GM to hire Campbell’s son and the son-in-law of another union official as skilled tradesmen. GM refused as neither man was a current employee of GM and neither had the experience and qualifications for a skilled tradesman position.

In 1996, GM and the International United Autor Workers signed a three-year National Agreement. Douglas and Campbell then began negotiating the local agreement with GM for the Pontiac plant. They asked again for the two men to be hired. GM again refused. In July 1997, however, worker at the Pontiac plant began a strike. After 87 days, GM and the Auto Workers settled all issues, except for Douglas and Campbell’s request that GM hire the two relatives. Finally, in order to settle the strike, GM agreed to create two new positions and hired the relatives. After the two men began working at the Pontiac plant, however, other workers filed grievances that the two men were not qualified for the high-paying skilled positions.

¹⁴ New York Business Journal, November 17, 2015.

¹⁵ New York State Attorney General Press Release, September 4, 2014.

In 2002, the matter came to a head and Douglas and Campbell were charged in a three-count Federal indictment for conspiracy to violate the Labor-Management Relations Act, conspiracy to obstruct, delay and affect commerce under the 1946 Hobbs Act, and mail fraud.

The Defendants moved to dismiss the indictment as defective, and won. The U.S., however, appealed to the Sixth Circuit who reversed and reinstated the criminal charges.

The Court held that as a general rule, Federal courts do not have jurisdiction over activity which is arguably subject to Sections 7 and 8 of the National Labor Relations Act, and must defer jurisdiction to the NLRB. However, Federal courts may decide criminal charges that involve Federal labor law. Criminal charges are not preempted by Federal labor law, even if the underlying acts of the criminal indictment fall within the scope of Federal labor law.

A copy of the Sixth Circuit's decision is attached.