

The First of Thousands? The Long View of Local 1330's Challenge to Management Rights and Plant Closings

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Local 1330, *United Steel Workers v. U.S. Steel Corp.*¹ was an important chapter in the struggle between labor and capital in the Rust Belt. The plaintiffs, two union locals in Youngstown, Ohio representing 3500 workers, pressed novel property and contract claims to prevent U.S. Steel from exercising what the manufacturer viewed as its unbridled managerial right to close aging steel mills in Youngstown. A federal court order preventing the largest American steel company from closing its mills would have signaled a challenge to capital's ability to unilaterally chart the future course for basic industry in America's heartland.

With hindsight, it is now clear that by the time the Local 1330 litigation was underway, basic industry in the U.S. was already in a historic decline. The case arose as renewed global competition and a profit squeeze were shifting the corporate view of the labor-management accord and New Deal social policies that framed the post-World War Two era. Oil embargos, years of double-digit inflation and rising unemployment had ushered in the worst recession the U.S. had experienced since 1929. The near collapse of Chrysler in 1979 and President Reagan's no-holds-barred destruction of the Professional Air Traffic Controllers Organization in 1981 were signs of what corporate America had in store for the remainder of the 20th century: aggressive anti-union strategies, plant closings and outsourcing, coupled with the imposition of wage structures that permanently embedded widespread inequalities throughout the labor market.

When Staughton Lynd, plaintiffs' lead counsel, initiated this lawsuit he was already a well-known, seasoned leader of two of the seminal social protest movements of our time. Lynd had directed the Freedom Schools in the Mississippi Summer Project, a key vanguard institution of the burgeoning struggle for civil rights in the South. He went on to chair the first national march in Washington D.C. against the Vietnam War and played a central role in the anti-war movement. Uncompromising activism cost Lynd his faculty position at Yale University and blacklisted him from academia. Undeterred, he turned to law and the defense of labor rights. Upon graduating from the University of Chicago Law School, he headed to Youngstown, now as a movement lawyer and union ally.

The Steelworkers' initial complaint bypassed the terms of their collective bargaining agreements, raising common law contractual challenges to U.S. Steel's managerial

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¹ 631 F.2d 1264 (6th Cir. 1980).

decision to close its Youngtown mills. U.S. Steel, they argued, had breached an oral promise to keep the plants operating as long as they remained profitable. The plaintiffs' promissory estoppel theory alleged that the steel giant's promise reasonably induced forbearance on the part its workforce. The record proved that steelworkers eschewed longstanding, bargained-for work rules and undertook extraordinary efforts to bring the mills to profitability and save their way of life. Alternatively, the union sought injunctive relief to stop the dismantling of the mills and give a union-community coalition time to develop a plan to buy and run the mills.²

But their theory of the case shifted before trial. During a pretrial hearing the presiding federal judge articulated an alternative theory on which the steelworkers might proceed. Clearly unhinged by the enormity of the consequences of plant closures, Judge Lambros proffered *sua sponte* a community property claim as new grounds for relief:

Everything that has happened in the Mahoning Valley has been happening for many years because of steel. . . We are talking about an institution, a large corporate institution that is virtually the reason for the existence of that segment of this nation (Youngstown). Without it, that segment of this nation perhaps suffers, instantly and severely. Whether it becomes a ghost town or not, I don't know. I am not aware of its capability for adapting. . .

Hasn't something come out of that relationship, something that out of which not reaching for a case on property law or a series of cases but looking at the law as a whole, the Constitution, the whole body of law, not only contract law, but tort, corporations, agency, negotiable instruments taking a look at the whole body of American law and then sitting back and reflecting on what it seeks to do, and that is to adjust human relationships in keeping with the whole spirit and foundation of the American system of law, to preserve property rights.

It would seem to me that. . . a property right has arisen from this lengthy, long-established relationship between United States Steel, the steel industry as an institution, the community in Youngstown, the people in Mahoning County and the Mahoning Valley in having given and devoted their lives to this industry. Perhaps not a property right to the extent that can be remedied by compelling U.S. Steel to remain in Youngstown. But I think the law can recognize the property right to the extent that U.S. Steel cannot leave that Mahoning Valley and the Youngstown area in a state of waste, that it cannot completely abandon its obligation to that community, because certain vested rights have arisen out of this long relationship and institution.³

Given the court's remarkable assertion, Lynd amended the complaint, adding a count alleging that a "property right has arisen" between the parties "which this Court can enforce. . .in the nature of an easement" that requires that U.S. Steel "assist in

² United Steel Workers, Local 1330 v. U.S. Steel Corp., 492 F.Supp. 1 (N.D. Ohio), *aff'd* in part, vacated and remanded in part 631 F.2d 1264 (6th Cir. 1980).

³ Local 1330, 631 F.2d at 1279-80.

preservation of the institution of steel” in Youngstown, factor into the cost of closing the mills “the cost of rehabilitating the community and its workers,” and “be restrained from leaving the Mahoning Valley in a state of waste and from abandoning its obligation to that community.”⁴

During the five-day trial in Youngstown in March of 1980, the steelworkers presented evidence and testimony on all of these claims. They lost on all counts. Indeed, two hours after Lynd presented his closing argument, Judge Lambros ruled against the workers from the bench, reading from an already prepared twenty-three page decision. On appeal, the Sixth Circuit echoed the district court’s sympathy for the plaintiffs, but affirmed the judgment on the promissory estoppel and community property claims.⁵

The Sixth Circuit’s opinion made clear that the unfolding economic calamity was not a judicially cognizable dispute and that the issues before it were “clearly the responsibility” of legislative bodies.⁶ Without any semblance of irony, the opinion recounted the massive migration of the textile industry to the nonunionized South and the fact that it proceeded “without hindrance from the Congress of the United States, from the legislatures of the states concerned, or, for that matter from the courts of the land.”⁷ Without citing a case, the court indicated that it was bound to jurisprudence that commanded willful blindness when confronted with profit-driven economic calamity.

Indeed, Local 1330 portended the legal system’s unwillingness to halt the processes that created the Rust Belt and the rapid decline of the power of organized labor. Plant closings, and their trail of economic waste and destruction, were not judiciable issues and would proceed as if the corporate decisions were acts of God, intermittently unleashing natural disasters that lay waste to society. Less than three years after the Sixth Circuit decided the case against the union, U.S. Steel announced that it was shutting down twenty percent of its steelmaking capacity and laying off 15,000 workers;⁸ the company’s steel making workforce, which stood at 106,000 in 1979, fell to 30,000 within a decade; its steel making capacity cut in half.⁹ Within a decade, the United Steelworkers went from one million members to only 200,000 in basic steel and an equal number in light manufacturing and service jobs.¹⁰ The consequences for other industrial unions were comparable.¹¹ Overall, union membership declined to

⁴ Id. at 1280.

⁵ Id. at 1264.

⁶ Id. at 1282.

⁷ Id.

⁸ Nathaniel C. Nash, *Week In Business*, N.Y. TIMES, Jan. 1, 1984, at 3-10.

⁹ See KENNETH WARREN, *BIG STEEL: THE FIRST CENTURY OF THE UNITED STATES STEEL CORPORATION 1901-2001*, at 309-346 (2008).

¹⁰ NELSON LICHTENSTEIN, *STATE OF THE UNION: A CENTURY OF AMERICAN LABOR* 212 (2002).

¹¹ Id. at 213-14.

sixteen percent of the private sector workforce by 1991;¹² in 2011, it hovers at around seven percent.¹³

As law students who study Local 1330 routinely learn, the best that the U.S. Congress could do when faced with catastrophic deindustrialization was to enact the Worker Adjustment and Retraining Notification (WARN) Act in 1988.¹⁴ The practical result was not unlike the outcome in the storied welfare rights case, *Goldberg v. Kelly*.¹⁵ There, welfare rights activists had charted a campaign to secure a constitutionally guaranteed income for the poor. However, they were left only with a constitutional obligation for states to provide notice and a measure of procedural due process prior to the removal of a poor citizen's welfare benefits. Similarly, the WARN Act did nothing to guarantee any substantive right, i.e., a worker's right to employment or even an income stream to supplement unemployment benefits. The WARN Act only required that businesses with a full-time workforce of 100 or more provide sixty-day notice before a plant closing or mass layoff.¹⁶ Like welfare rights, government protection of workers' rights would go no further than offering workers a measure of procedural protection to alert them to impending unemployment and economic disaster.

But what happened in the federal courts and in Congress does not convey the whole story. The fight to stop plant closings mobilized workers and community activists throughout the Midwest. In Youngstown, the Ecumenical Council was formed as a coalition of religious groups and organized labor. The Council took up the cause of stopping plant closings; mass meetings were held in churches where ministers preached the gospel of community ownership of the mills. Steel workers contended that their jobs and the mills were their property, and that they had inalienable rights to both. For a time, despite the judiciary's dismissal of the plaintiffs' theories, there was widespread support in the industrial cities and towns of the Midwest for the notion that workers have a legitimate stake – a communal property right, if you will – in the ownership and management of major industries that anchor their communities.

Thirty years later, Local 1330 is remembered as an emblematic case demonstrating our legal system's inability to address the historic downsizing and restructuring of American industry and the unprecedented assault on the unionized blue-collar workforce that accompanied it. The articles in this issue¹⁷—a product of the symposium *Local 1330 v. U.S. Steel: 30 Years Later* convened by Unbound in February,

¹² *Id.* at 213.

¹³ Economic News Release, *Union Members – 2010*, U.S. BUREAU OF LABOR STATISTICS, <http://www.bls.gov/news.release/union2.nr0.htm> (last visited on Nov. 23, 2011).

¹⁴ 29 U.S.C. §§ 2101 – 2109.

¹⁵ *Goldberg v. Kelly*, 397 U.S. 254 (1980).

¹⁶ 29 U.S.C. § 2102(a).

¹⁷ 7 UNBOUND: HARV. J. LEGAL LEFT 39, 39-87 (2011).

2011¹⁸—recount an important part of this story, offering the reflections of key participants and academics on the case’s history and current relevance.

The issue leads with contributions from two of the movement’s protagonists. Staughton Lynd reflects on the tactics of the movement to stop plant closings and the history of Youngstown in order to draw some lessons for today. Mike Stout was grievance chairperson of Steelworkers Local 1397 at the Homestead Works outside of Pittsburgh; his contribution recounts the struggle to create a Steel Valley Authority that could exercise the power of eminent domain to keep the plants open and run by a community-worker partnership.

Also featured are articles from legal academics reflecting on the political valence of the legal reasoning proffered by the authors of the Local 1330 decisions. Joseph Singer takes the Union plaintiffs’ eminent domain claims as a starting point for a discussion of property rights in democratic societies. Karl Klare focuses on the use of Local 1330 in critical legal pedagogy, by conceptualizing the social dislocations resulting from plant closings as a tortious injury to workers and their communities. Brishen Rogers calls attention to the court’s invocation of doctrine as an instance of legal violence.

As the presentations of Staughton Lynd and Mike Stout make clear, the Local 1330 story also offers important lessons for cause lawyering, providing inspiration and insights that can inform the strategies used by public interest lawyers and their evolving relationship to social movements.

Perhaps one of the fundamental lessons to be relearned is that we must teach about and embrace the long view. Lynd, a veteran of the civil rights and anti-war movements, understood the power of social movements to reshape the political and legal landscape. Yet, during the Local 1330 litigation, he was not unduly optimistic about the outcome of this lawsuit. After the trial court’s ruling, he offered the assembled group of steelworkers and their supporters a story to provide perspective. It merits retelling three decades later.¹⁹

Lynd told the assembled crowd of workers about his participation in a small picket line protesting the Vietnam War on the Pentagon’s steps in June of 1965. It did not take long for the military police to arrive and express incredulity that such a small group would undertake what was obviously an ineffectual action – a picket to stop the world’s most powerful war machine. Lynd replied, “You don’t understand. We are just the first of thousands.”²⁰ Indeed, by 1971, hundreds of thousands of citizens were marching in the streets to demand an end to the Vietnam War. These mass

¹⁸ Symposium, *Local 1330 v. U.S. Steel: 30 Years Later* (Feb. 25 2011). A schedule and video of the full conference, including additional presentations not appearing in this issue, is available at www.legaleft.org/conference/local1330.

¹⁹ This story is recounted in STAUGHTON LYND, *LIVING INSIDE OUR HOPE: A STEADFAST RADICAL’S THOUGHTS ON REBUILDING THE MOVEMENT* (1997). See also JULES LOBEL, *SUCCESS WITHOUT VICTORY: LOST LEGAL BATTLES AND THE LONG ROAD TO JUSTICE IN AMERICA* (2003).

²⁰ LYND, *supra* note 19, at 1.

mobilizations were a decisive force that helped bring an end to the U.S. military intervention in Southeast Asia.

Unfortunately, a sustained mass mobilization of thousands capable of challenging the rising tide of plant closings did not materialize in Youngstown or elsewhere in the wake of Local 1330. But Lynd's experiences had caused him to reject the idea that one should expect quick results in these circumstances. He came to believe that participation in social movements requires one to become a long distance runner.²¹

In 2011, record levels of unemployment and rising poverty rates have been met with long-discredited austerity measures that have tended to drown out calls for bold state action to create jobs and foster economic recovery, not to mention rethinking our economic modes of production. Congressional inaction and corporate hostility continue to constrain the statutory mission of the National Labor Relations Board²² and compromise the labor movement's ability to organize the unorganized.

But the enactment of regressive laws in 2011 restricting the collective bargaining rights of public sector workers in Wisconsin and Ohio has provoked a historic response. Tens of thousands of workers protested and held vigils in state legislative buildings. In Wisconsin, anti-union legislators and Governor Scott Walker became the targets of recall elections while in Ohio union supporters won a state-wide referendum by a large margin that repealed that state's newly-enacted anti-union legislation. Whether these mobilizations will be sustained, whether a historic revival of labor as a social movement is in the making and what types of creative legal action might take shape is, at this point, uncertain. But if the union mobilizations in the Midwest and the emerging alliance between OccupyWallStreet and organized labor are any indication²³, might it be the case that the cadre of workers and cause lawyers that challenged plant closings thirty years ago were indeed the first of thousands?

²¹ *Id.* at 40.

²² See, e.g., Mark Barenberg, James Brudney & Karl Klare, *Labor Rights, Under Republican Attack*, N.Y. TIMES, Oct. 13, 2011, <http://www.nytimes.com/2011/10/13/opinion/labor-rights-under-republican-attack.html>.

²³ See, e.g., Peter Wallsten, *Occupy Wall Street, Unions Get Their Activism Together*, WASH. POST, Oct. 20, 2011, http://www.washingtonpost.com/politics/occupy-wall-street-and-labor-movement-forming-uneasy-alliance/2011/10/19/gIQAkxo80L_story.html.