LABOR LAW—REMEDIES—DECLARATORY JUDGMENT IS APPROPRIATE RELIEF IN A NON-ARBITRABLE § 301 LABOR DISPUTE CONCERNING A COLLECTIVE BARGAINING AGREEMENT WITH A NO-STRIKE CLAUSE, *Bituminous Coal Operators' Association v. International Union, United Mine Workers*, 585 F.2d 586 (3d Cir. 1978).

The 1974 collective bargaining negotiations between the Bituminous Coal Operators' Association[1] (BCOA) and the International Union of the United Mine Workers of America[2] (International) culminated in the signing of the National Bituminous Coal Wage Agreement of 1974 (Agreement) on December 6.[3] As the date approached for the implementation of an article creating a new union position,[4] the parties manifested total disagreement concerning the tasks to be allocated to the new category.[5] The controversy resulted

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[1] Brief for Appellant at 4, Bituminous Coal Operators' Ass'n v. International Union, UMW, 585 F.2d 586 (3d Cir. 1978) [hereinafter cited as Brief for Appellant]. BCOA is the sole bargaining agent for management of companies whose unions are represented by the UMW. *Id.* The National Labor Relations Act recognizes this multi-employer bargaining unit and empowers it to negotiate national wage agreements and to interpret contract provisions under its own constitution and by-laws. *Id.* at 4–5. From its inception in 1950, BCOA has negotiated agreements between the member mine owners and the UMW. Brief for Appellee International Union, United Mine Workers of America at 3, BCOA v. UMW, 585 F.2d 586 (3d Cir. 1978) [hereinafter cited as Brief for Appellee UMW].

[2] Brief for Appellee UMW, *supra* note 1, at 3. The UMW is the sole collective bargaining agent for employees of companies represented by BCOA. *Id.* The governmental structure is three-tiered, with the powers of each level strictly limited by the UMW constitution. *Id.* Members at a particular mine location comprise "the grass roots level." *Id.* at 3. Although unable to adopt laws in conflict with the International or the district in which they are located, the local unions are essentially self-governing bodies. *Id.*

The district unions, in the middle tier of authority, are also situated in the coal fields. *Id.* at 4. District autonomy is limited only by required compliance with the rulings of the International Executive Board of the International (IEB), the third tier. *Id.* at 5.

Located in Washington, D.C., the IEB and the International President steer the International through its routine daily operations. *Id.* Neither has authority to discipline any member, and before action is initiated "against any International, District, or Local officer, . . . a full panoply of due process standards must be observed." *Id.* at 5–6.

[3] BCOA v. UMW, 431 F. Supp. 774, 776 (W.D. Pa. 1977), *remanded*, 585 F.2d 586 (3d Cir. 1978).

[4] Under the 1974 Agreement, the roof bolter's helper was to assist in the operation of continuous mining machines and roof bolting machines. Brief for Appellee International Union, United Mine Workers at 3, Consolidation Coal Co. v. International Union, UMW, Buckeye Coal Co. v. International Union, UMW, District 4, UMW, and Local 6290, UMW, 585 F.2d 586 (3d Cir. 1978) [hereinafter cited as Brief for Appellee District 4].

[5] Consolidation Coal Co. v. UMW, 431 F. Supp. 787, 793 (W.D. Pa. 1977), *remanded*, 585 F.2d 586 (3d Cir. 1978); Brief for Appellee District 4, *supra* note 4, at 3. The union had anticipated that the creation of this new position would increase the total number of employee positions. *Id.* However, the company added to the workload of roof bolter's helper tasks previ-

in widespread picketing and wildcat strikes,[6] shutting down mines in eastern Ohio, northern West Virginia, and western Pennsylvania.[7]

These work stoppages contravened the 1974 Agreement provisions to maintain the integrity of the contract,[8] and to utilize the extensive grievance-arbitration procedure to peacefully resolve all local disputes.[9] The collective bargaining process was the contractually designated vehicle for resolution of disputes national in character.[10]

Wildcat strikes commenced on March 7, 1975.[11] It was not until six weeks later that all mines returned to full operation, as a result of the mine owners' acquiescence to the union demands.[12] These union

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ously accomplished by other classifications, and was thus able to fill the roof bolter's helper position by eliminating the other positions. *Id.*

[6] Brief for Appellee District 4, *supra* note 4, at 4. The union safety committee certified this reclassification as imminently dangerous and consequently the mine crews refused to work. *Id.*

[7] 431 F. Supp. at 788. The strike spread as additional mines posted imminent danger notices and striking miners engaged in stranger picketing. Brief for Appellee District 4, *supra* note 4, at 4.

During 1974 and the first five months of 1975, 880 UMW strikes followed a similar pattern. Brief for Plaintiffs-Appellants at 10, BCOA v. UMW, 585 F.2d 586 (3d Cir. 1978) [hereinafter cited as Brief for Plaintiffs-Appellants]. These wildcat strikes lasted from one day to several weeks. *Id.* Some of the alleged points of contention pertained to the participation of salaried employees in classified work, non-posting of overtime sheets, staggered vacations, job assignments and job bidding. *Id.*

[8] 2 Joint Appendix to Brief for Plaintiffs-Appellants [hereinafter cited as 2 JA] at 63. The clause does not specifically mention "no-strike," merely "maint[enance of] the integrity of . . . [the] contract." *Id.* For a full discussion of the controversy concerning this implied no-strike clause, see notes 101–04 *infra* and accompanying text.

[9] 585 F.2d at 589. Article XXIII, section c of the 1974 Agreement states:

> Should differences arise between the Mine Workers and the Employer as to meaning and application of the provisions of this Agreement, or should differences arise about matters not specifically mentioned in this Agreement, or should any local trouble of any kind arise at the mine, an earnest effort shall be made to settle such differences at the earliest practicable time.

2 JA, *supra* note 8, at 55. This statement of intent preambles the grievance-arbitration procedure which delineates the five levels of settlement, each subsequent level reviewing the decision reached at the prior level. 2 JA, *supra* note 8, at 53–60. The employee first submits the complaint to the foreman. *Id.* at 55. The decision is then appealable to a joint committee of management and elected employees (Mine Committee). *Id.* at 56. A district representative and an employer representative comprise the next level of appeal. *Id.* A panel arbitrator will review any solution unsatisfactory to either party at a district hearing. *Id.* at 57. The ultimate decision emanates from the Arbitration Review Board. *Id.* One BCOA-elected representative, one UMW-elected representative, and one jointly-elected umpire form the Arbitration Review Board. *Id.* at 54. Unless appealed, the decisions at each tier are final and binding on both parties. *Id.* at 59.

[10] 585 F.2d at 589; 2 JA, *supra* note 8, at 63.

[11] Brief for Plaintiffs-Appellants, *supra* note 7, at 12.

[12] *Id.* at 13–14. The underlying instigation for the reopening of the mines was in dispute. Brief for Appellee District 4, *supra* note 4, at 4–6; Brief for Plaintiffs-Appellants, *supra* note 7,

activities adversely affected thousands of employees,[13] costing $76,000,000 in lost wages and 116,500,000 tons in lost production.[14] The disruptions reflected the historical inability of these two bargaining groups to peacefully resolve their conflicts.[15]

BCOA filed a complaint against the UMW International in the United States District Court for the Western District of Pennsylvania.[16] Pursuant to section 301 of the Labor-Management Relations Act (Taft-Hartley),[17] the mine owners group sought a declaratory judgment[18] that the union had breached the 1974 Agree-

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at 12–14. The International appointed a commission to operate within the strike area. Brief for Appellee District 4, *supra* note 4, at 4. The stated purpose of the commission was to expedite negotiation between the employers, the mine committees and the health and safety committees pending the results of arbitration. *Id.* at 4–5. The UMW position was that the efforts of the commission resolved the controversy over the roof bolter's helper with the resultant termination of the work stoppages. *Id.* at 5–6.

The mine owners alleged that the commission refused to submit to arbitration and that the commission in fact exhorted the strikers by seeking unemployment and welfare payments for them. Brief for Plaintiffs-Appellants, *supra* note 7, at 13. Employer submission to union demands was, according to the owners, the sole impetus for the mine re-openings. *Id.* at 13–14.

[13] Brief for Plaintiffs-Appellants, *supra* note 7, at 13.

[14] 585 F.2d at 590.

[15] Brief for Appellant, *supra* note 1, at 7–8. In the five year period prior to the filing of this complaint, wildcat strikes caused more than 4,500,000 lost work days at BCOA mines. *Id.* at 7. Concomitant losses were $219,379,000 lost wages, $50,446,000 lost pension and trust funds, and 63,562,000 tons lost production. *Id.* at 8.

The United States district courts in the areas of the bituminous coal fields in 1975 were flooded with suits similar to the ones under discussion. 431 F. Supp. at 778. Most of these strikes arose in utter disregard of contactual arbitration procedures. *Id.*

The work stoppages had been escalating steadily: 516,000 work days lost in 1972; 529,000 days lost in 1973; 1,006,000 days lost in 1974; 1,368,000 days lost from January 1, 1975 to September 16, 1975. Complaint at 6, BCOA v. UMW, 431 F. Supp. 774 (W.D. Pa. 1977), *remanded*, 585 F.2d 586 (3d Cir. 1978). The union undertakings in the current 1978 contract show no substantial departure from those in the 1974 Agreement; consequently there is no compelling argument that the trend will reverse itself. 585 F.2d at 599.

[16] 431 F. Supp. at 774; Brief for Appellee UMW, *supra* note 1, at 9.

[17] Labor-Management Relations (Taft-Hartley) Act § 301(a), 29 U.S.C. § 185(a) (1976). The pertinent portions provide that:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter . . . may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

Id.

[18] Brief for Appellant, *supra* note 1, at 8–9; Brief for Appellee UMW, *supra* note 1, at 9–10. The Declaratory Judgments Act provides in pertinent part:

> In a case of actual controversy within its jurisdiction . . . any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not

ment.[19] The complaint averred that the International had failed to take positive action to assure contract compliance and to prevent illegal strikes and picketing.[20] In addition, BCOA sought injunctive relief to compel the International to undertake a vigorous program of encouraging and educating the local unions to comply with the 1974 Agreement.[21]

Five mine owners represented by BCOA in the Agreement[22] filed separate section 301 Taft-Hartley complaints in the United States District Court for the Western District of Pennsylvania.[23] The individual actions sought equitable relief and money damages[24] against both the International and the local unions participating in the wildcat strikes and picketing.[25] The owners alleged a deliberate attempt to circumvent the grievance-arbitration procedure of the Agreement.[26]

The district court opinions recognized that the actions of the UMW breached the 1974 Agreement.[27] However, Judge Weber considered the relief sought beyond the power of the court and

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further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

28 U.S.C. § 2201 (1976).

[19] Brief for Appellant, *supra* note 1, at 8–9; Brief for Appellee UMW, *supra* note 1, at 9–10.

[20] *Id.*

[21] Brief for Appellant, *supra* note 1, at 9; Brief for Appellee UMW, *supra* note 1, at 10. The specific actions demanded by BCOA from the International included: (1) instruction of members that the 1974 Agreement prohibited strikes and picketing over arbitrable issues and prohibited refusal to cross these picket lines; (2) discipline of non-compliant members; (3) refusal to defend non-compliant members, local unions, and districts; (4) condemnation of stranger picketing; and (5) suspension of automony of non-compliant local or district unions. Brief for Appellant, *supra* note 1, at 9.

[22] The owners were Consolidation Coal Company, North American Coal Corporation, The Valley Camp Coal Company, The Pittson Company, and The Buckeye Coal Company. Brief for Appellee District 4, *supra* note 4, at cover. The court heard the *Buckeye* case separately and entered Civil Action No. 75-447 on May 25, 1977. 585 F.2d at 589 n.1.

[23] Consolidation Coal Co. v. UMW, 431 F. Supp. 787 (W.D. Pa. 1977).

[24] Brief for Plaintiffs-Appellants, *supra* note 7, at 3. Several companies continued to experience wildcat strikes concerning the roof bolter's helper, due to the union's dissatisfaction with the arbitrator's decision. *Id.* at 4. In an attempt to prevent further strikes, the companies submitted a prayer for a prospective injunction against work stoppages concerning this issue. *Id.* However, the owners withdrew this prayer after the evidentiary hearing in an attempt to avoid invocation of the injunction prohibition of the Norris-LaGuardia Act, 29 U.S.C. §§101–115 (1976). *Id.*

[25] 585 F.2d at 597; Brief for Plaintiffs-Appellants, *supra* note 7, at 3; Brief for Appellee District 4, *supra* note 4, at 6–7.

[26] 585 F.2d at 597.

[27] 431 F. Supp. 774, 786; 431 F. Supp. 787, 793.

granted the International's motion to dismiss.[28] BCOA and the five individual owners appealed the ruling to the United States Court of Appeals for the Third Circuit.[29]

Judge Gibbons authored the opinion for the court of appeals in *BCOA v. UMW*,[30] holding that certain requirements of the Norris-LaGuardia Act barred injunctive relief sought by BCOA against the International.[31] However, neither the equitable relief requested by the individual mine owners against the International nor the declaratory relief sought by BCOA suffered from the same infirmities.[32] The latter two issues were remanded to the district court for reconsideration in light of the principles delineated by the court of appeals.[33]

The propriety of an injunction to restrain union activity in a labor dispute has been a controversial topic for over a century.[34] Until the inception of the Norris-LaGuardia Act, federal courts freely granted injunctions to employers who sought to restrain activities of the young labor movement.[35] Whether the substantive law was valid or clear mattered little because once the momentum of a strike was halted, it could rarely be regained.[36] The injunction clearly was of great benefit to the employer group and of great detriment to the struggling labor groups.[37]

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[28] 431 F. Supp. 774, 786; 431 F. Supp. 787, 793. The court determined that injunctive and declaratory relief would violate the anti-injunction provisions of the Norris-LaGuardia Act, 431 F. Supp. 774, 784, and would be difficult to formulate and enforce. *Id.* The opinion did note, however, that the

> troublesome [aspect of the case] is that UMWA enjoys the ease of bargaining with BCOA alone, in behalf of its members, but yet seeks not to be bound to BCOA when BCOA attempts to enforce the contract in behalf of the same members.

Id. at 787.

[29] 585 F.2d at 589.

[30] *Id.*

[31] *Id.* at 594. *See* notes 178–94 *infra* and accompanying text.

[32] 585 F.2d at 595, 599.

[33] *Id.* at 597, 599. A tangential issue was whether or not the BCOA claims were mooted because the 1974 Agreement had been duly succeeded by the National Bituminous Coal Wage Agreement of 1978. *Id.* at 599. Judge Gibbons ruled out mootness, finding that the new agreement would not prevent the recurring wildcat strikes. *Id.*

[34] F. FRANKFURTER & N. GREENE, THE LABOR INJUNCTION 1 (1930); *see also* In re Debs, 158 U.S. 564 (1895) and discussion of *Debs* in FRANKFURTER & GREENE, *supra* at 18–20.

[35] C. MORRIS, THE DEVELOPING LABOR LAW at 7–8 (1971). The life-tenured federal judiciary appeared to be less sympathetic to the plight of the common man than the state judiciary. *Id.* For a discussion of the early abuses of the labor injunction, see B. TAYLOR & F. WITNEY, LABOR RELATIONS LAW at 31–36 (2d ed. 1975).

[36] MORRIS, *supra* note 35, at 7; TAYLOR & WITNEY, *supra* note 35, at 33.

[37] MORRIS, *supra* note 35, at 7; TAYLOR & WITNEY, *supra* note 35, at 23, 31–34. A temporary restraining order proposed merely to maintain the status quo between the parties. *Id.* at

Federal legislation provided no guidelines[38] and the courts were finding it increasingly difficult to discriminate between a tolerable labor activity and an intolerable one.[39] The inability of the federal judicial system to cope with the multifarious problems of modern labor became increasingly obvious.[40] By the 1930's, it was apparent that only a national federal labor policy crafted by Congress could provide relief.[41]

The disastrous effects of the Great Depression exacerbated the plight of the American worker.[42] Because the inequality between business and the individual laborer had never been so patent,[43] labor accelerated its efforts to control use of the injunction through state and federal legislation.[44]

In 1927 Congress began debate on a bill[45] that was later to be known as the Norris-LaGuardia Federal Anti-Injunction Act.[46] When the bill became law five years later,[47] it dramatically changed the balance of power in American labor-management relations.[48] The Norris-LaGuardia Act strengthened the bargaining position of labor by curbing the power of the federal judiciary to interfere in labor disputes.[49] The courts no longer had jurisdiction to issue injunctions against certain activities by participants or interested parties in cases "involving or growing out of any labor dispute."[50] The legislation specifically enumerated in section 4 the protected activities,[51] which

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32–33. In a labor dispute, however, the state of suspended animation had a myriad of effects. Attention of labor leaders turned to the court room; public opinion arose against the strikers; union members became confused and afraid. *Id.* at 33. *See generally* FRANKFURTER & GREENE, *supra* note 34.

[38] TAYLOR & WITNEY, *supra* note 35, at 31.

[39] MORRIS, *supra* note 35, at 7; TAYLOR & WITNEY, *supra* note 35, at 31. No jury was present at injunction proceedings, and the judiciary's only guides were "their own social and economic predilections." *Id.*

[40] MORRIS, *supra* note 35, at 7.

[41] MORRIS, *supra* note 35, at 7–10.

[42] TAYLOR & WITNEY, *supra* note 35, at 70.

[43] *Id.* at 70–71. Working groups increasingly identified their burdens as outgrowths of big business and its requisite competitive system. *Id.*

[44] *Id.* The American Federation of Labor spearheaded a vigorous state and national campaign to curtail the use of the dreaded injunction. *Id.*

[45] *Id.* at 80.

[46] 29 U.S.C. §§ 101–115 (1976). For a detailed discussion of the inception of this legislation, see FRANKFURTER & GREENE, *supra* note 34, at 205–28.

[47] 29 U.S.C. § 101 (1976). The date of passage was March 23, 1932. *Id.*

[48] MORRIS, *supra* note 35, at 22; TAYLOR & WITNEY, *supra* note 35, at 80.

[49] MORRIS, *supra* note 35, at 22; TAYLOR & WITNEY, *supra* note 35, at 81.

[50] Norris-LaGuardia § 4, 29 U.S.C. § 104 (1976).

[51] *Id.* Section 4 of Norris-LaGuardia provides:

> No court of the United States shall have jurisdiction to issue any restraining

included not only direct aid or involvement in work stoppages,[52] but also auxiliary efforts to advise or induce anyone to engage in a work stoppage.[53]

Section 9 of the Norris-LaGuardia Act granted further protection by its mandate for a court hearing prior to the issuance of any injunction concerning labor dispute activities not protected by section 4.[54] Both the complaint for the hearing and any injunction resulting therefrom must be phrased with the clearest specificity.[55] This precision

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order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 103 of this title;

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 103 of this title.

Id. *See* FRANKFURTER & GREENE, *supra* note 34, at 214–16.

[52] Norris-LaGuardia § 4(a)-(f), 29 U.S.C. § 104 (a)-(f) (1976). *See* note 51 *supra*.

[53] Norris-LaGuardia § 4(g)-(i), 29 U.S.C. § 104 (g)-(i) (1976). *See* note 51 *supra*.

[54] Norris-LaGuardia § 9 reads:

No restraining order or temporary or permanent injunction shall be granted in a case involving or growing out of a labor dispute, except on the basis of findings of fact made and filed by the court in the record of the case prior to the issuance of such restraining order or injunction; and every restraining order or injunction granted in a case involving or growing out of a labor dispute shall include only a prohibition of such specific act or acts as may be expressly complained of in the bill of complaint or petition filed in such case and as shall be expressly included in said findings of fact made and filed by the court as provided in this chapter.

Id.

[55] *Id.*

eliminates the possibility of a blanket injunction, prohibiting legal as well as illegal acts.[56]

The Norris-LaGuardia Act's broad definition of "labor dispute"[57] established the wide scope of the Act.[58] A labor dispute "include[d] any controversy concerning terms or conditions of employment, . . . regardless of whether or not the disputants [stood] in the proximate relation of employer and employee."[59] A case that involved a labor dispute was merely a case that "involve[d] persons who are engaged in the same industry, trade, craft, or occupation."[60] "The allowable area of economic conflict"[61] was concomitant with the realities of modern collective bargaining. A union frequently exerted pressure on an industry-wide basis in order to achieve its goals.[62] The Norris-LaGuardia Act legitimated this activity and sheltered it from a federal injunction.[63]

The Supreme Court fully approved Norris-LaGuardia[64] and twenty-five states subsequently enacted state anti-injunction legislation.[65] This federal legislation shielded the nascent labor movement from judicial interference with activation of their economic weapons.[66] The Wagner Act, passed by Congress in 1935, buttressed the effect of Norris-LaGuardia by giving workers the right to organize, to bargain collectively, and to utilize economic self-help.[67] Along with the narrowed federal jurisdiction under Norris-LaGuardia, these three rights under the Wagner Act gave the American labor movement the power and freedom necessary to become the " 'the

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[56] TAYLOR & WITNEY, *supra* note 35, at 88.

[57] Norris-LaGuardia § 13(c), 29 U.S.C. § 113(c) (1976).

[58] TAYLOR & WITNEY, *supra* note 35, at 84.

[59] Norris-LaGuardia § 13(c), 29 U.S.C. § 113(c) (1976).

[60] Norris-LaGuardia § 13(a), 29 U.S.C. § 113(a) (1976).

[61] FRANKFURTER & GREENE, *supra* note 34, at 1.

[62] *Id.* at 216–17. This provision highlighted the "interdependence" of the American crafts, "[t]he economic bond that unites in interest all who earn their livelihood by any of the processes of fabrication and distribution of a single commodity, or of related commodities, or of commodities industrially dependent upon one another. . . ." *Id.* at 216.

[63] TAYLOR & WITNEY, *supra* note 35, at 84–85.

[64] *Id.* at 96. Perhaps the Court found it impossible to ignore prevailing social thought. *Id.* at 98. *See* Lauf v. Shinner & Co., 303 U.S. 323 (1938) (dissolving injunction against parties not in proximate relationship of employer-employee); Seen v. Tile Layers, 301 U.S. 468 (1937) (upholding validity of Wisconsin anti-injunction legislation similar to Norris-LaGuardia).

[65] TAYLOR & WITNEY, *supra* note 35, at 96. These state laws are referred to as "little" Norris-LaGuardia Acts. *Id.* at 98.

[66] MORRIS, *supra* note 35, at 25.

[67] National Labor Relations (Wagner) Act, 29 U.S.C. §§ 151–152 (1976); MORRIS, *supra* note 35, at 28.

largest, the most powerful, and the most aggressive that the world ha[d] ever seen.' "[68]

As unions prospered, problems developed[69] as a result of management's inability to enforce its collective bargaining agreements.[70] The organized workers frequently resorted to picketing and strikes, many of which ended in tragedy and bitterness.[71] Some of these work stoppages occurred in the face of explicit no-strike clauses in collective bargaining agreements.[72]

By 1947 public interest had shifted from protecting labor's right to organize and engage in concerted activity to restricting union activities and enforcing collective bargaining agreements.[73] The election issues of 1946 centered around possible amendments to the Wagner Act that would compel union compliance to its contracts with employers.[74] Fashioned from the many bills introduced in Congress[75] and passed over President Truman's veto,[76] the Taft-

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[68] MORRIS, *supra* note 35, at 35. Between 1935 and 1947, union membership increased from 3 to 15 million. *Id.* Union enrollment in some industries approached 80% of the available work force. *Id.* Labor leaders assumed positions of power and importance. *Id.* For a discussion of the shortcomings of the Wagner Act, see *id.* at 30–34.

[69] *Id.* at 37. Secondary boycotts injured many groups who, because they were not parties to a contract, were powerless to give the unions any relief. *Id.* Closed and union shops were often abused. *Id.* Jurisdictional disputes among the unions themselves caused many long work stoppages in the construction industry. *Id.*

[70] *Id.* at 442. The one-sided Wagner Act bestowed rights upon labor unions but relegated to labor none of the accompanying responsibilities. *Id.* There was not even a mandate to comply with the contracts they negotiated. *Id.* Additionally, unions were not considered legal entities and thus could not be sued in a contract action. *Id.*

[71] *Id.* at 37. Strike activity during World War II was minimal, TAYLOR & WITNEY, *supra* note 35, at 205, perhaps due to the passage of the Smith-Connally War Labor Disputes Act, 50 U.S.C. §§ 1501-1511 (1976). MORRIS, *supra* note 35, at 32. This legislation placed heavy procedural requirements on legal strikes and heavy penalties on illegal strikes. *Id.* The notable exceptions to the peacetime hiatus were the bitter United Mine Worker coal strikes led by John L. Lewis in 1943. TAYLOR & WITNEY, *supra* note 35, at 205. These events probably precipitated the passage of the Smith-Connally Act. MORRIS, *supra* note 35, at 32. In 1946, however, with the war over, the country encountered its worst strike problem to date with 1.43 percent of working time lost (compared to .47 percent the previous year). TAYLOR & WITNEY, *supra* note 35, at 211. See *id.* for further discussion of the social climate of 1946.

[72] MORRIS, *supra* note 35, at 32, 36.

[73] *Id.* at 40, 442; Note, *Prospective Boys Market Injunctions*, 90 HARV. L. REV. 790, 792 (1977).

[74] MORRIS, *supra* note 35, at 35–36.

[75] *Id.* at 36.

[76] *Id.* at 39. When President Truman vetoed the bill, he stated:

> The bill taken as a whole would reverse the basic direction of our national labor policy, inject the Government into private economic affairs on an unprecedented scale, and conflict with important principles of our democratic society. Its provisions would cause more strikes, not fewer. It would contribute neither to industrial peace

Hartley amendments to the Labor-Management Relations Act[77] became the law of the land on August 22, 1947.[78]

An important goal of this legislation was the enforcement of no-strike clauses in collective bargaining agreements.[79] Section 301 gave federal district courts jurisdiction over "[s]uits for violation of contracts between an employer and a labor organization . . . affecting commerce."[80] However, Taft-Hartley did not repeal the anti-injunction provisions of Norris-LaGuardia.[81] Conflict arose when section 301 of the Taft-Hartley amendments was juxtaposed to section 101 of Norris-LaGuardia. The latter prohibited federal courts from issuing injunctions in labor disputes, while the former endowed federal courts with jurisdiction in cases involving violations of collective bargaining agreements. Attempts to harmonize one with the other resulted in much litigation[82] as the courts struggled to resolve the apparent incompatibility in light of past legislative intents, current public policy and prevailing social conditions.

Nearly 10 years after Taft-Hartley became effective, the Supreme Court took its first step toward the accommodation of the two acts.[83] Ironically, this initial section 301 action concerning a collective bar-

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> nor to economic stability and progress. It would be a dangerous stride in the direction of a totally managed economy. It contains seeds of discord which would plague this Nation for years to come.

Id. (quoting the President's Message on Veto of Taft-Hartley Bill (June 20, 1947), 20 LRRM 22 (1947)).

[77] Taft-Hartley § 301(a), 29 U.S.C. § 185(a) (1976).

[78] MORRIS, *supra* note 35, at 39. Because labor unions worked so vigorously to prevent passage of Taft-Hartley, rather than working toward compromises, the labor movement had little impact on the substance of the legislation. *Id.* at 45.

[79] Textile Workers Union v. Lincoln Mills, 353 U.S. 448, 453–54 (1957); MORRIS, *supra* note 35, at 443. Thus, collective bargaining agreements would impact equally on both labor and management. 353 U.S. at 454. *But cf.* Gregory, *The Law of the Collective Agreement*, 57 MICH. L. REV. 635, 637 (1959) (motivations for Taft-Hartley were myriad, and "congress was not entirely sure what it meant in section 301").

[80] Taft-Hartley § 301(a), 29 U.S.C. § 185(a) (1976). The words "collective bargaining agreement" appear nowhere in the Taft-Hartley amendments. Gregory, *supra* note 79, at 637.

[81] Comment, *Prospective Injunctions and Federal Labor Law Policy: Of Future Strikes, Arbitration, and Equity*, 52 NOTRE DAME LAW. 307, 308 (1976).

Taft-Hartley does explicitly repeal another section of Norris-LaGuardia pertaining to liability of union officers, Sinclair Refining Co. v. Atkinson, 370 U.S. 195, 204 (1962). Had Congress intended to repeal the anti-injunction provisions also, it could have affected that intent in a like manner. *Id.*

[82] Perhaps President Truman's comments concerning "seeds of discord made upon passage" of the Taft-Hartley amendments have been borne out by history. *See* note 76 *supra*.

[83] Rains, *Boys' Market Injunctions: Strict Scrutiny of the Presumption of Arbitrability*, 28 LAB. L.J. 30, 30–31 (1977). Professor Gregory felt that "nobody took it very seriously." Gregory, *supra* note 79, at 637.

gaining agreement before the high court was a union suit to compel an employer to comply with contractual grievance/arbitration procedures.[84] *Textile Workers Union v. Lincoln Mills*[85] established that section 301 was more than mere jurisdictional grant to federal courts.[86] The federal judiciary was to sculpt a substantive federal labor law aimed at enforcement of collective bargaining agreements, with emphasis on specific performance of arbitration provisions.[87] The formation of this corpus would challenge judicial creativity; remedies were to be developed that reflected the purpose and policy of congressional legislation.[88]

Justice Douglas detailed the Taft-Hartley intent to favor collective bargaining agreements with no-strike provisions, citing the resultant industrial stability.[89] Because an agreement to arbitrate was the usual return promise for a no-strike clause, federal labor policy would also favor and enforce arbitration compacts.[90] The "stiff procedural requirements"[91] mandated by Norris-LaGuardia section 7 did not apply to an injunction to compel arbitration because the refusal to arbitrate was not an abuse that Norris-LaGuardia sought to prevent.[92] Therefore, an injunction could issue in a labor dispute of this

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[84] Textile Workers Union v. Lincoln Mills, 353 U.S. at 449. The agreement contained no-strike and grievance/arbitration clauses. *Id.* The controversies, involving workloads and work assignments, passed through the grievance procedure without resolution. *Id.* Arbitration, which could have been requested by either party at that point, was proffered by the union; the employer declined. *Id.* The union then brought suit to compel arbitration. *Id.* The district court granted relief; the court of appeals overruled due to lack of jurisdiction. *Id.*

[85] 353 U.S. 448 (1957).

[86] *Id.* at 451.

[87] *Id.*

[88] *Id.* at 457. The judiciary was exhorted to utilize not only federal legislation and compatible state legislation, but also "the penumbra of express statutory mandates." *Id.*

Justice Douglas dismissed any constitutional difficulties. *Id.* The commerce clause clearly gave Congress power to legislate concerning labor-management controversies. *Id.* Article III, section 2 of the Constitution enlarged judicial authority to "cases 'arising under . . . the Laws of the United States . . . .'" *Id.* By Taft-Hartley section 301(a), Congress enacted federal law which the courts were to adjudicate under Article III, section 2. *Id.* "It [was] not uncommon for federal courts to fashion federal law where federal rights [were] concerned." *Id.*

[89] *Id.* at 453–54.

[90] *Id.* at 455.

[91] *Id.* at 458.

[92] *Id.*; Note, *supra* note 73, at 792. Section 4 of Norris-LaGuardia listed specific protected activity. *Id.* Refusal to arbitrate was not so listed. *Id.* The *Lincoln-Mills* court read Taft-Hartley section 8 to confirm an inclination toward arbitration because it stated that any party seeking an injunction must have previously availed itself of all reasonable means of settlement. 353 U.S. at 458. *Cf.* FRANKFURTER & GREENE, *supra* note 34, at 222–23 ("It is surely a fair requirement that one who invokes the extraordinary jurisdiction of a court should prove that he has exhausted all reasonable means for the peaceful settlement of a labor dispute.").

type with no conflict with the anti-injunction or specificity provisos of Norris-LaGuardia.

Three years later, Justice Douglas expanded the Court's policy of favoring arbitration provisions in his majority opinions in the Steelworkers Trilogy.[93] Section 301 was held to charge the federal courts with the duty to discern a breach of promise to arbitrate and to enforce that promise.[94] Questionable situations were to be determined so as to promote and encourage the arbitration process.[95] In *United Steelworkers v. Warrior & Gulf Navigation Co.*, the Court held that it would presume the parties' intention to arbitrate "[i]n the absence of any express provision excluding a particular grievance from [the] arbitration [process]. . . ."[96] The federal courts would enforce arbitration awards with particularity with no review of the substance of the awards, unless the court determined that the award did not "draw . . . its essence from the collective bargaining agreement."[97]

The federal labor policy of favoring the arbitral process gained further momentum in *Local 174, Teamsters v. Lucas Flour Co.*[98] The Court first established the pre-emption of federal labor policy over conflicting state laws or policies.[99] Potentially differing interpretations under state and federal systems would impede progress toward the goal of peaceful contract negotiation and dispute settlement.[100]

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[93] United Steelworkers v. American Mfg. Co., 363 U.S. 564 (1960); United Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960); United Steelworkers v. Enterprise Corp., 363 U.S. 594 (1960).

[94] *Warrior*, 363 U.S. at 582.

[95] *Id.* at 583. The parties' chosen arbitrators, rather than the courts', possessed the expertise and sensitivity necessary to successful dispute settlement. *Id.* at 581–82, 596.

[96] *Id.* at 584. The presumption of arbitrability had a more salutary effect on conflict resolution than intricate judicial involvement in contract interpretation because the interpretation was relegated to experts. *Id.* at 585.

[97] *Id.* at 597. Because the grievance procedure which preceded arbitration involved participation of the parties themselves, the grievance/arbitration process was actually part of the collective bargaining process. *Id.* at 578, 581. Even submission of "frivolous claims" could have a "therapeutic" effect. *Id.* at 568. While the Trilogy widened the jurisdiction of the federal courts in determining arbitrability, it narrowed the function of the federal courts in construing collective bargaining agreements. Comment, *Collective Bargaining and the No-Strike Clause: The Sinclair Refining Case*, 15 MAINE L. REV. 93, 98 (1963).

[98] 369 U.S. 95 (1962).

[99] *Id.* at 102. Charles Dowd Box Co. v. Courtney, 368 U.S. 502 (1962), had empowered state courts to apply federal substantive labor law. *Id.* at 511. The question of proper procedure when state law conflicted with federal law was not answered. *Id.* at 514.

[100] 369 U.S. at 102–03. As section 301 actions could be brought in any one of the states, parties bargaining for a multi-state agreement could never be certain of the meanings of their own words. *Id.* at 103. The possibility of dissimilar interpretations in various jurisdictions would increase litigation, defeating the policy favoring peaceful settlement. *Id.* at 103–04.

Yet the primary issue in *Lucas Flour* concerned the validity of a strike to settle a conflict while the parties were contractually bound to a grievance/arbitration procedure.[101] Though the agreement contained not a trace of a no-strike provision, the Court held that such would be implied from the clause submitting all disputes to final and binding arbitration.[102] "To [have held] otherwise would obviously [have done] violence to accepted principles of traditional contract law."[103] Permitting such a work action would have been tantamount to allowing the parties to substitute "economic warfare" for the bargained-for arbitration process.[104]

Lucas Flour affirmed a judgment for damages caused by the strike,[105] but did not grapple with the question of whether an injunction could issue against such a work stoppage in progress or in futuro. Federal labor policy favored both arbitration and no-strike agreements.[106] Section 301 would indeed support an injunction to compel arbitration.[107] But *Lucas Flour* left unasked and unanswered the question of whether section 301 would support an injunction to enforce a no-strike clause.[108]

Three and a half months after *Lucas Flour*, the Supreme Court replied to that question in the negative in *Sinclair Refining Co. v. Atkinson*.[109] Despite a no-strike clause and an arbitration provision, the union had perpetrated nine work stoppages over a period of 19 months.[110] All of these strikes allegedly emanated from arbitrable disputes.[111] Sinclair sought a preliminary injunction to enjoin such action in the future.[112]

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[101] *Id.* at 104.

[102] *Id.* at 105.

[103] 369 U.S. at 105.

[104] *Id.* This result would have clashed directly with the arbitration policy expressly favored in the Steelworkers' Trilogy, 363 U.S. at 580–81. However, the Court was careful to state that this no-strike clause would be implied only for those issues which the parties were explicitly bound by contract to submit to arbitration. 369 U.S. at 106.

[105] 369 U.S. at 97.

[106] Textile Workers Union v. Lincoln Mills, 353 U.S. at 453–54. *See* notes 89 and 90 *supra* and accompanying text.

[107] 353 U.S. at 458. *See* note 91 *supra* and accompanying text.

[108] But for Norris-LaGuardia the enjoining of a strike in violation of a no-strike clause would have been a logical extension of *Lucas Flour*. Note, *supra* note 73, at 793.

[109] 370 U.S. 195 (1962).

[110] *Id.* at 197.

[111] *Id.*

[112] *Id.*

Justice Black, writing for the majority, literally construed Norris-LaGuardia[113] and upheld a union's right to strike notwithstanding that the strike violated a collective bargaining agreement.[114] The Court rejected any accomodation argument,[115] reasoning that there was in fact no conflict between section 4 of Norris-LaGuardia and section 301(a) of Taft-Hartley.[116] The juxtaposition of the two indicated to the majority that an employer would be able to obtain an order to compel arbitration, and would also be able to seek a remedy in damages for the breach of a collective bargaining agreement,[117] but he would definitely not be able to obtain an injunction to prevent a breach of that agreement if the action he sought to enjoin was protected by section 4 of Norris-LaGuardia.[118] *Sinclair* reaffirmed the national labor policy supporting arbitration, but posited that Congress had delineated the parameters of that support.[119] Enjoining a work stoppage was not within those limits.[120]

The strong dissent by Justice Brennan asserted that since both acts did in fact co-exist, both should be given their "fullest possible effect."[121] This was the essence of the duty that Congress relegated to the courts with the passage of Taft-Hartley.[122] The *Sinclair* dissent, a vanguard of the majority opinion in *Boys' Market*,[123] summarized the logistics of harmonizing the two acts: "Accommodation requires only that the anti-injunction policy of Norris-LaGuardia not intrude into areas not vital to its ends, where injunctive relief is vital

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[113] 370 U.S. at 199. The controversy *sub judice* was unquestionably a "labor dispute" within the protection of Norris-LaGuardia section 4. *Id.* at 198–99.

[114] *Id.* at 200.

[115] *Id.* at 209.

[116] *Id.* at 213–14. The Court rationalized that judicial forbearance from issuing injunctions violating Norris-LaGuardia did not diminish judicial support of collective bargaining agreements containing grievance/arbitration procedures. *Id.*

[117] *Id.*

[118] *Id.* Congress did not intend for Taft-Hartley to reinstall the federal judiciary in the injunction business. *Id. See* note 51 *supra* for a listing of activity protected by section 4.

[119] 370 U.S. at 213.

[120] *Id.* While affirming *Lincoln Mills* and its progeny, the Court distinguished them from the *Sinclair* action. *Id.* at 212. The *Lincoln Mills* injunction was an order to arbitrate, and the refusal to submit to arbitration was not protected by Norris-LaGuardia. *Id.* The majority perceived no nexus between enjoining peaceful strikes and encouraging arbitration. *Id.* at 213.

[121] *Id.* at 216.

[122] *Id.* at 223. The dissenters asserted that section 4 was not repealed because the consequences of a complete revocation of that broad section were unforeseeable. *Id.* Neither did Congress wish to abrogate the basic salutary policies of Norris-LaGuardia. *Id.* Thus, the legislators left the ad hoc accommodation of Norris-LaGuardia and Taft-Hartley to the courts. *Id.*

[123] Boys' Market, Inc. v. Retail Clerks Union, Local 770, 398 U.S. 235 (1970).

to a purpose of § 301; it does not require unconditional surrender."[124]

Eight years later, Justice Brennan authored the majority opinion in *Boys' Market, Inc. v. Retail Clerks Union*,[125] the current basis of federal judicial authority to enjoin work stoppages in certain limited circumstances.[126] The collective bargaining agreement underlying a labor dispute must contain a mandatory arbitration provision, and the injunction sought must be appropriate despite the prohibition of Norris-LaGuardia.[127]

The decision detailed factors relevant in determining the propriety of injunctive relief.[128] The district court must construe the agreement to assure that it does indeed provide for the compulsory arbitration process, and must order the employer to arbitrate as a condition to the issuing of an injunction.[129] The court must then examine the equities attendant to the relief sought, including the potential of continuing breaches and irreparable injury.[130] The final step is a determination of which party will suffer the greater harm: the employer from denial of relief, or the union from granting of relief.[131]

In overruling *Sinclair*, the Supreme Court characterized that decision "as a significant departure from . . . [its] otherwise consistent"[132] policies of favoring peaceful dispute settlement and accommodating the various congressional sources of substantive labor law.[133] These judicial policies reflected public policy in encouraging private arbitration,[134] and *Sinclair* served only to defeat this scheme.[135]

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[124] 370 U.S. at 225. Justice Brennan also expressed fear that employers would hesitate in the future to bargain for a no-strike clause/arbitration package if those provisions were enforceable against the employer but not the union. *Id.* at 227.

[125] 398 U.S. 235 (1970).

[126] U.S. Steel Corp. v. UMW, 593 F.2d 201, 204–05 (3d Cir. 1979).

[127] 398 U.S. at 353–54.

[128] *Id.* at 254. *See also* 370 U.S. at 228.

[129] 398 U.S. at 254. Once the arbitration promise is discerned, the no-strike promise arises. *See* notes 102–04 *supra* and accompanying text.

[130] 398 U.S. at 254.

[131] *Id.*

[132] *Id.* at 241.

[133] *Id.*

[134] *Id.*

[135] *Id.* Congressional silence in the eight years after *Sinclair* was not viewed by the *Boys' Market* Court as dispositive of approval of *Sinclair*. *Id.* at 242.

The consistency and uniformity in national labor law deemed so vital by *Lincoln Mills*[136] had been gravely threatened by the *Sinclair* ruling in combination with a subsequent United States Supreme Court case, *Avco Corp. v. Aero Lodge 735, IAM*.[137] The latter Court sustained removal from state to federal court of an action seeking a labor injunction.[138] This resulted in total preclusion of equitable relief, because federal courts were so barred by *Sinclair*.[139] While Congress had clearly intended that Taft-Hartley provide additional remedies as a supplement to state jurisdiction, the combination of these two Supreme Court decisions was causing Taft-Hartley to assert a narrowing effect.[140] The *Boys' Market* overruling of *Sinclair* vitiated this conflict because essentially the same remedies would be available in either state or federal courts.[141] Justice Brennan posited that more than "isolated words"[142] were to be considered in interpreting legislation.[143] "[R]ather, consideration [had to] . . . be given to the total corpus of pertinent law and the policies that inspired ostensibly inconsistent provisions."[144] The social conditions and federal judicial propensities that gave rise to the prohibitions of Norris-LaGuardia had changed greatly since 1932.[145] Congressional attention had shifted from protection of the young labor movement to enforcement of collective bargaining agreements.[146] However, a revision of legislation had not accompanied that shift in attention, and the

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[136] 353 U.S. at 457; *see also* notes 85–88 *supra* and accompanying text.

[137] Avco Corp. v. Aero Lodge 735, IAM, 390 U.S. 557 (1968).

[138] 390 U.S. at 560–61. The employer filed suit in state court to enforce no-strike and arbitration clauses in a collective bargaining agreement. *Id.* at 558. The court granted an ex parte injunction. *Id.* The union then moved for removal in the district court, which subsequently dissolved the injunction. *Id.* at 559.

[139] 370 U.S. at 213–14. *See* note 118 *supra* and accompanying text. The issue of application of *Sinclair* to state courts had never been adjudicated. 398 U.S. at 247.

[140] 398 U.S. at 245. This narrowing effect also conflicted with Dowd Box Co. v. Courtney, 368 U.S. 502 (1962) (state courts to have concurrent jurisdiction under section 301 with federal courts). If a state court were to issue an injunction for violation of a collective bargaining agreement, the labor group had merely to seek removal to a federal court for dissolution of the injunctive relief. 398 U.S. at 246.

[141] 398 U.S. at 246–47. Equality of remedies would also have resulted from the extension of *Sinclair* to the states. *Id.* However, the *Boys' Market* Court reasoned that since Congress had given no indication that Norris-LaGuardia was to be applied to the states, the more efficient judicial approach was the overruling of *Sinclair*. *Id.* at 247.

[142] *Id.* at 250.

[143] *Id.*

[144] *Id.*

[145] *Id. See* notes 35–40 *supra* and accompanying text.

[146] 398 U.S. at 251.

duty to accommodate conflicting statutes had devolved upon the federal judiciary.[147]

Two years later, the Supreme Court elaborated on the presumption of arbitrability as a basis for a *Boys' Market* injunction in *Gateway Coal Co. v. UMW*.[148] Public policy favoring peaceful dispute settlement would operate to subject even a safety dispute to arbitration,[149] as long as the dispute did not concern "'an immediate danger.'"[150] Finding a duty to arbitrate, the Court issued equitable relief to enjoin all work stoppages associated with the safety issue.[151]

The collective bargaining agreement must contain a mandatory arbitration provision, and the precise issue generating an illegal strike must clearly fall within that arbitration provision for an injunction to issue against the strike.[152] The Supreme Court thus emphasized this narrowness of the *Boys' Market* injunction in *Buffalo Forge Co. v. United Steelworkers*.[153] Whether the sympathy strike in *Buffalo Forge* violated the no-strike clause was a question for the arbitrator to decide.[154] While the federal courts could compel the parties to arbitrate, they could not enjoin the strike pending the outcome of the arbitral process.[155]

The *Boys' Market* accommodation of section 4 of Norris-LaGuardia to section 301(a) of Taft-Hartley supported the legislative preference for arbitration.[156] This sympathy strike did not concern any arbitrable issue, and enjoining it would have directly controverted Norris-LaGuardia without furthering any national labor policy.[157] Such was not the goal of accommodation, and the majority of this 5-4 split court held *Boys' Market* inapplicable.[158]

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[147] *Id.* *See* note 135 *supra*.

[148] Gateway Coal Co. v. UMW, 414 U.S. 368 (1974).

[149] 414 U.S. at 379.

[150] *Id.* at 384. A work stoppage solely for protection of employees from imminent peril is protected by section 502 of the Labor Management Relations Act, 29 U.S.C. § 143. 414 U.S. at 385.

[152] Buffalo Forge Co. v. United Steelworkers, 428 U.S. 397, 407–08 (1976).

[153] *Id.*

[154] *Id.* at 411. The sympathy strike was not related to any issue subject to arbitration by contract. *Id.* at 407.

[155] *Id.* at 410. Such an action would deeply involve the courts in dispute settlement. *Id.* at 410–11. This involvement would conflict with the national policy favoring private settlement of disputes, aided by the arbitrator's expertise. *Id.* For a further discussion of *Buffalo Forge*, see Note, *Sympathy Strike May Not Be Enjoined Pending Arbitration of its Legality Under the No-Strike Clause of A Collective Bargaining Agreement*, 8 SETON HALL L. REV. 89 (1976).

[156] 428 U.S. at 407.

[157] *Id.*

[158] *Id.* The Court differentiated between a general anti-strike policy and a pro-arbitration policy. *Id.* at 409. Section 301 relegated collective bargaining agreement enforcement to the

As various district courts began to decide section 301 actions involving equitable remedies, it became apparent that the *Boys' Market* parameters concerning the scope of prospective injunctions were not sufficiently clear.[159] The Seventh Circuit affirmed a permanent injunction against "work stoppages and strikes resulting from any differences or local trouble which the parties are contractually obligated to arbitrate under the terms of their . . . [a]greement."[160] A narrower remedy was upheld in the Tenth Circuit.[161] This injunction prohibited specified categories of concerted activity in reaction to disputes over particular arbitrable issues.[162] On the pole opposite the liberal Seventh Circuit stood the Fifth Circuit which held prospective injunctions violative of specificity requirements of Norris-LaGuardia section 9.[163] Judge Wisdom reasoned also that the limits of *Boys' Market* required that the specific issues underlying each strike be adjudicated to ascertain arbitrability before any injunction could issue.[164]

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federal courts. *Id.* That enforcement, however, was limited to arbitration provisions. *Id.* The violation of a no-strike clause per se was an insufficient basis for an injunction clashing with protected rights under Norris-LaGuardia. *Id.*

[159] Note, *supra* note 73, at 794. For a survey of *Boys' Market* injunctions in the circuits, see Rains, *supra* note 83, 38–42.

[160] Old Ben Coal Corp. v. Local 1487, UMW, 500 F.2d 950, 951 (7th Cir. 1974) (Old Ben II). This injunction, responsive to a long series of wildcat strikes, was phrased as broadly as the contractual arbitration clause. *Id.* at 953. The court declared that the extent of the misconduct should determine the scope of the injunction. *Id.* Old Ben Coal Corp. had suffered heavy and unrecoverable losses as a result of this pattern of strikes. *Id.* The court of appeals held this broad relief to be the only suitable solution to these critical controversies in the coal field areas. *Id.* The union could hardly claim vagueness, the court reasoned, as the injunction was phrased in the very language the parties had bargained for in their agreement. *Id.*

See also Old Ben Coal Corp. v. Local 1487, UMW, 457 F.2d 162 (7th Cir. 1972), in which the same court limited the injunction to the specific issue before the court, but intimated that if there was not adequate compliance to the narrow injunction, a broader one could issue. *Id.* at 165.

[161] CF & I Steel Corp. v. UMW, 507 F.2d 170 (10th Cir. 1974).

[162] *Id.* at 173. The trial court found that certain controversial issues had given rise to a continuing pattern of illegal union conduct. *Id.* at 172. The court of appeals upheld the injunctive prohibition against " 'strike, work stoppage, interruption of work, or picketing . . . over disputes arising from employee suspensions, employee discharges and work assignments . . . .' " *Id.* at 173.

[163] U.S. Steel Corp. v. UMW, 519 F.2d 1236, 1245 (5th Cir. 1975), *cert. denied*, 428 U.S. 910 (1976). *See* notes 54–56 *supra* and accompanying text.

[164] 519 F.2d at 1245. Judge Wisdom held additionally that the prospective injunction was invalidated by Fed. R. Civ. P. 65(d) which states:

> Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts

The Third Circuit followed an intermediate approach in *U.S. Steel Corp. v. UMW*,[165] where it sought to harmonize Norris-LaGuardia and Taft-Hartley in the context of a prospective *Boys' Market* injunction.[166] Clearly section 301 empowered federal courts to construe collective bargaining agreements.[167] Once a plaintiff pleaded and proved that a defendant had "engag[ed] in a pattern of conduct . . . [involving] repeated and similar violations,"[168] the courts should not be burdened with repetitive litigation over the same issue.[169] In this majority opinion, Judge Gibbons agreed with Judge Wisdom that the arbitrability of an issue underlying the work stoppage must be adjudicated on a case-by-case basis.[170] However, once a particular issue had been litigated, "a remedial injunction [could] . . . encompass a pattern of ongoing activity."[171]

U.S. Steel elaborated on the specificity necessary to validate a prospective injunction. The relief must be closely related to the evidence presented at the adversary proceeding, curtailing no more activity than necessary to abate the illegal actions.[172] The responsibilities of each party enjoined must be displayed in detail to avoid the blanket injunction approach of the pre-Norris-LaGuardia era.[173]

The tripartite holding in *BCOA v. UMW* illustrated the disposition of requests for both an overly broad[174] and a properly phrased prospective injunction.[175] The third section of Judge Gibbons' opinion, which dealt with declaratory judgment as a remedy in a section

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sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

Fed. R. Civ. P. 65(d) (1976); 519 F.2d at 1246.

[165] U.S. Steel Corp. v. UMW, 534 F.2d 1063 (3d Cir. 1976). This opinion examined the collective bargaining agreement that succeeded the contract involved in *Old Ben II*, *CF & I Steel*, and the Fifth Circuit's *U.S. Steel*. *Id.* at 1076. This agreement is also the contract that is the subject of the note case.

[166] *Id.* at 1077.

[167] *Id.*

[168] *Id.*

[169] *Id.*

[170] *Id.*

[171] *Id.*

[172] *Id.* Factors to be considered are past behavior, probability of repetition, and the role that each defendant has or would play in such past or future actions. *Id.*

[173] *Id.* at 1077–78. This detailed account would preclude violation of Rule 65(d). *Id.* *See* note 164 *supra*.

[174] 585 F.2d at 592–94. *See* notes 183–84 *infra* and accompanying text.

[175] 585 F.2d at 597–99. *See* notes 195–205 *infra* and accompanying text.

301 proceeding,[176] was a fine example of the "judicial inventiveness" mandated in *Lincoln Mills*.[177] The BCOA quest for injunctive relief[178] failed to meet both the arbitrability requirement of *Boys' Market/Gateway Coal* and the specificity requirement of Norris-LaGuardia and *U.S. Steel*.[179] BCOA sought to compel a vigorous undertaking by the International to encourage contract compliance at the local level.[180]

Both parties agreed that the issue was not within the grievance/arbitration provision of the Agreement,[181] as disputes "national in character" were not subject to arbitration.[182] BCOA contended, however, that the *Boys' Market* requirement of arbitrability was not relevant to the owners' claims because the requested injunction would restrain neither picketing nor work stoppages.[183] The court disagreed with this analysis on two grounds. The indoctrination of members by the International arguably had a propensity to violate section 4(i) which protected even the inducement to conduct picketing or strikes.[184] More importantly, the ultimate result desired, abatement of strikes and picketing, was definitely prohibited by section 4(a) and (e).[185] When an injunction sought such objectives, the prohibitions of section 4 applied, and the arbitrability requirement of *Boys' Market* must be met.[186]

Even were the underlying dispute arbitrable, the prospective injunction requested would not have fulfilled the specificity requirements of Norris-LaGuardia section 9.[187] Norris-LaGuardia precluded

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[176] 585 F.2d at 594–97. *See* notes 206–29 *infra* and accompanying text.

[177] 353 U.S. at 457.

[178] 585 F.2d at 590. Some of the actions sought were instruction and discipline of members, refusal to defend any party encouraging or engaging in illegal activity, suspension of uncooperative subordinate unions, and condemnation of roving picketing. 431 F. Supp. at 777–78. The relief requested was to use "any and all reasonable means at its command." *Id.* at 777.

[179] 585 F.2d at 594.

[180] *See* note 21 *supra* and accompanying text.

[181] 585 F.2d at 593.

[182] *Id.* at 589. These national disputes were to be settled by the collective bargaining procedure. *Id.* These issues could not be presumed arbitrable under Steelworkers' Trilogy because the contract expressly excluded them from the arbitration provision. *See* note 96 *supra* and accompanying text.

[183] 585 F.2d at 593. Norris-LaGuardia section 4(a) and (e) protect these activities. *See* notes 51–52 *supra* and accompanying text.

[184] 585 F.2d at 593–94. *See* notes 51 and 53 *supra* and accompanying text.

[185] 585 F.2d at 594.

[186] *Id.* In some instances a section 301 injunction against activity only collateral to arbitrable controversies could issue, but only if the activity were not protected by section 4(a)-(1). *Id.*

[187] *Id. See* note 54 *supra* and accompanying text.

the issuance of a broadly phrased injunction.[188] *U.S. Steel* declared the "re-litigation exception" to the interdict of section 9,[189] which required a full hearing judging the conduct in question violative of the labor contract.[190] If a prospective injunction issued from such a hearing, that charge could forbid only repeated actions similar to the conduct previously adjudicated.[191] The charge sought did not fall within the purview of the re-litigation exception because it was overly general in its scope.[192] The mine owners desired to enjoin and compel actions referenced in the broadest of terms;[193] and this overbreadth forced the court to affirm the district court's conclusion that there was no claim upon which that relief could be granted.[194]

The defects that vitiated BCOA's claim did not plague the individual mine owners' request for a prospective injunction.[195] Though the wording of the claims was similar, the litigation underlying each was clearly distinguishable. The individual mines presented evidence relating to specific work stoppages at specific locations arising out of issues which were clearly arbitrable.[196] The owners sought to enjoin future action of the same type.[197] Because the underlying issue was within the mandatory arbitration clause, the injunction pursued was within the *Boys' Market* exception.[198] Section 4 could not pose an absolute bar to relief.[199]

The owners' request was also very close to fulfilling the two-tiered test of *U.S. Steel*.[200] The union's past actions had been adjudicated in violation of the Agreement.[201] In addition, the

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[188] 585 F.2d at 594. *See* note 178 *supra*.

[189] 585 F.2d at 594. *See* notes 167–73 *supra* and accompanying text.

[190] 534 F.2d at 1077. *See* notes 172–73 *supra* and accompanying text.

[191] 534 F.2d at 1077.

[192] 585 F.2d at 594. *See* note 178 *supra*.

[193] *See* 431 F. Supp. at 777–78. *See also* note 178 *supra*. The breadth of this requested relief would also cause it to conflict with Rule 65(d) of the Federal Rules of Civil Procedure. 585 F.2d at 594. *See* note 164 *supra* and accompanying text.

[194] 585 F.2d at 594. *See* note 24 *supra* and accompanying text. The complaints of BCOA and the individual mine owners were consolidated in district court and appealed as one case. 585 F.2d at 589.

[195] 585 F.2d at 599. *See* Consolidation Coal Co. v. International, UMW, 431 F. Supp. at 789–91 (1977) for the full text of relief sought. *See* note 24 *supra* and accompanying text.

[196] 585 F.2d at 598. *See* note 24 *supra*. Disputes local in nature were within the scope of the mandatory arbitration clause. 585 F.2d at 589.

[197] 585 F.2d at 589.

[198] *Id.* at 598. In order to pursue the national policy favoring arbitration, the *Boys' Market* exception evolved as a means of accommodating section 4 to section 301.

[199] *Id. See* notes 142–47 *supra* and accompanying text.

[200] 585 F.2d at 598–99. *See* notes 170–71 *supra* and accompanying text.

[201] 585 F.2d at 598.

employer group had established that the actions it sought to enjoin in the future were repetitive and similar in type and location to the acts previously adjudicated.[202] The only question remaining was whether or not the injunction could be drawn with sufficient specificity to avoid running afoul of section 9 and Federal Rule of Civil Procedure 65(d).[203] The *Bituminous Coal* court asserted that such a drafting was within the realm of possibility[204] and remanded the issue to the district court for appropriate consideration.[205]

BCOA had also asserted a claim for a declaratory judgment that certain past conduct of the International during wildcat strikes had breached the Agreement.[206] Judge Gibbons initiated his analysis by examining the applicability of traditional grounds for refusal of such relief.[207] He ascertained that BCOA was not seeking the judgment in lieu of some other proscribed remedy and that the court's judgment would neither usurp the decisional authority of some other body nor erode the arbitration process.[208]

The International urged that declaratory relief be declined because that remedy would have the same effect as an injunction phrased in the broad terms of the contract.[209] In refuting this contention, the court particularized the effect of a declaratory judgment. While an injunction mandated immediate compliance on pain of contempt, a declaratory decree merely circumscribed certain rights and obligations of the parties, or breaches thereof.[210] Should subsequent relief be necessary, that relief could be granted only " 'after reasonable notice and hearing . . . .' "[211] Thus the declaratory judgment

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[202] *Id.*

[203] *Id.* at 599. The district court had refused to grant the injunction, positing that the language could not be made sufficiently specific. 431 F. Supp. at 783.

[204] 585 F.2d at 599. The decree had to be limited to anticipated recurrences of the actions judged to be violations of the Agreement and had to enumerate specific steps to be taken to prevent the recurrences. *Id.*

[205] *Id.*

[206] *Id.* at 595.

[207] *Id.* at 594. The resolution of this dispute was not contractually relegated to an arbitral forum, nor was it within the exclusive jurisdiction of the National Labor Relations Board or a sovereign state. *Id.* at 594–95.

[208] *Id.* at 595. The Steelworkers' Trilogy had expressly stated that the judiciary's intervention in arbitrable disputes was to be limited to the determination that the dispute was in fact subject to the arbitration process. 363 U.S. at 596–97. To become involved in the settlement process would have defeated the national policy of favoring private resolution of labor controversies. *Id.* *See* notes 94–97 *supra* and accompanying text.

[209] 585 F.2d at 596.

[210] *Id.* at 595.

[211] *Id.* at 596. The Declaratory Judgments Act states in pertinent part:

Further necessary or proper relief based on a declaratory judgment or decree may

averted the "judgment preclusion"[212] effect of an injunction, because additional proceedings had to ensue before equitable relief would issue against an adverse party.[213]

The International also contended that Norris-LaGuardia prohibited declaratory as well as injunctive remedies.[214] The court, however, was not receptive to this argument.[215] In 1932, when Congress enacted Norris-LaGuardia, declaratory decrees did not issue from federal courts;[216] the Declaratory Judgments Act was not passed until two years later.[217] Congress could not have intended to prohibit a non-existent remedy.[218] Moreover, when the Declaratory Judgments Act was passed in 1934, there was no mention of excluding labor disputes.[219]

A declaratory decree in this labor dispute, the court asserted, possessed numerous advantages.[220] Such a remedy would apprise the parties of their mutual obligations under the Agreement.[221] Because the judgment would concern an interpretation of the Agreement, other signatories to the contract could also rely on the holding, and multiple litigation could be avoided.[222] Lastly, because declaratory relief was issued before actions occurred which might re-

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be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.

28 U.S.C. § 2202 (1976).

[212] 585 F.2d at 596. The issuance of an injunction estops the parties from seeking a subsequent judgment on that same point. *Id.*

[213] *Id.* Judge Gibbons analogizes the judgment preclusion of declaratory relief to the judgment preclusion of a monetary judgment, utilizing the example of Republic Steel Corp. v. UMW, 570 F.2d 467 (3d Cir. 1978). *Id.* In that case the Third Circuit reversed a summary judgment against the International, asserting that the International may have been liable for damages incurred by Republic Steel during wildcat strikes in August 1975 and January 1976. 570 F.2d at 469, 480. The declaration of contractual liability can form a basis for actions against the International by other signatories of that same industry-wide contract, because the International would be estopped from re-litigating a previously adjudicated issue. 585 F.2d at 596. With liability declared, a subsequent hearing would concern only damages resulting from a similar activity. *Id.*

[214] 585 F.2d at 595.

[215] *Id.*

[216] *Id.*

[217] 28 U.S.C. § 2201, Historical and Revision Notes-1948 Act (1976).

[218] 585 F.2d at 595.

[219] *Id.*

[220] *Id.* at 595, 596.

[221] *Id.* at 595. Each party contended that it had not violated the Agreement. *Id.* BCOA charged that the International breached obligations to enforce its promises in the contract. *Id.* The International asserted that it had never undertaken the charged obligations. *Id.*

[222] *Id.* at 596.

sult in injury, it was superior to relief in the form of a damages judgment.[223]

The final UMW contention asserted that the district court's denial of a declaratory judgment was a matter of discretion and should thus be affirmed.[224] The court of appeals agreed that the action was discretionary, but posited that the discretion should be a "reasoned discretion."[225] Because the lower court had treated the request for declaratory relief as a request for injunctive relief, it had not applied the proper standards for determining the propriety of a declaratory decree.[226] The court of appeals remanded this issue to the district court for suitable consideration.[227]

In summary, Judge Gibbons commented that the declaratory judgment should be generally available in labor disputes when the parties have not committed contract interpretation to the arbitration process.[228] The accessibility of this remedy would greatly diminish the propensity toward self-help to "solve" the conflict and would decrease the concomitant potential for violence and damages.[229]

The denial of the broad injunction against International[230] was dispositive of the Third Circuit's intent to honor the parameters of due process and past Supreme Court decisions.[231] The court examined the actual intent of the injunction sought and applied the proper law.[232] Lack of arbitrability precluded the *Boys' Market* exception to Norris-LaGuardia section 4, and lack of specificity precluded the *U.S. Steel* exception to Norris-LaGuardia section 9.[233]

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[223] *Id.*

[224] *Id.* The Declaratory Judgments Act states: "[A]ny court of the United States . . . may declare the rights and other legal relations of any interested party seeking such declaration . . . ." 28 U.S.C. § 2201 (1976).

[225] 585 F.2d at 596.

[226] *Id.* at 596–97. The factors to be considered are:

(1) the likelihood that the declaration will resolve the uncertainty of obligation which gave rise to the controversy;
(2) the convenience of the parties;
(3) the public interest in a settlement of the uncertainty of obligation; and
(4) the availability and relative convenience of other remedies.

Id.

[227] *Id.* at 597.

[228] *Id.* at 596.

[229] *Id.*

[230] *Id.* at 592. *See* notes 184–94 *supra* and accompanying text.

[231] 585 F.2d at 592–93.

[232] *Id.* at 594.

[233] *Id.* at 592–94.

The individual mine owners' request, however, did fulfill the requirements for a prospective injunction in a labor dispute.[234] The work stoppages at the local mines were clearly within the arbitration provision, and the evidence presented was sufficient to establish both a breach of contract and a pattern of ongoing activity.[235] Even with these criteria met, the court continued to be concerned with the specificity of the injunction to be issued and emphasized that factor upon remand.[236]

The most significant impact of *Bituminous Coal* emanated from the third segment of the triple holding. The use of declaratory relief was a novel approach to collective bargaining agreement enforcement.[237] As the declaratory judgment was not conditioned on arbitrability, contract promises excepted from arbitration were fair subject matter.[238] The strict provisos of Norris-LaGuardia were not applicable because Norris-LaGuardia was not concerned with limiting declaratory relief against labor unions.[239] In addition, the protections of Norris-La Guardia were intended primarily to shelter organizational strike activities or work stoppages occurring at contract expiration. The wildcat strike falls into neither classification. Due process was guaranteed by the Declaratory Judgments Act itself.[240] Section 301 apparently intended to include this remedy when it relegated enforcement of collective bargaining agreements to the federal courts.[241] In addition, the declaration lacked the harshness of an injunction with its accompanying contempt sanctions.[242]

What will occur if an adverse party does not heed a declaratory decree concerning its contractual undertakings and continues to engage in the adjudicated misconduct? The precise answer will surely be forthcoming when the district court of western Pennsylvania commences issuing declaratory relief. However, certain irresistible speculations arise when one juxtaposes *U.S. Steel* and *Bituminous Coal*. A district court can issue a declaratory judgment on the mutual obligations of parties to a contract, if the underlying dispute is not subject

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[234] *Id.* at 598–99. *See* notes 195–205 *supra* and accompanying text.

[235] 585 F.2d at 598.

[236] *Id.* at 599.

[237] *See id.* at 596. *See* notes 206–29 *supra* and accompanying text.

[238] 585 F.2d at 594. Had the issue been contractually committed to the arbitral forum, a declaratory judgment would be precluded. *Id.*

[239] *Id.* at 595.

[240] 28 U.S.C. § 2202 (1976).

[241] Textile Workers v. Lincoln Mills, 353 U.S. at 455–56 (citing 93 CONG. REC. 3656–57).

[242] 585 F.2d at 596.

to arbitration.[243] If there is no subsequent compliance to the decree, the parties may apply to the district court for enforcement under section 2202 of the Declaratory Judgments Act.[244] Should an injunction issue from that second hearing, it could be applied to the adverse party's future conduct by utilizing the *U.S. Steel* relitigation exception to Norris-LaGuardia.[245]

Peaceful dispute settlement is not only the heart of American labor policy but is an absolute mandate of highly industrialized American industry.[246] Harmonious resolution of controversies should be demanded not only in disputes subject to arbitration but also in disputes over non-arbitrable contractual undertakings.[247] The coal industry's wildcat strikes consume much of the nation's time and resources.[248] To enable the federal courts to command cooperation from the UMW International could have only a salutary effect upon the labor-management relations involved.[249] Reduced tensions between these parties would favorably impact the relevant public interests.

Boys' Market created an exception to Norris-LaGuardia in order to support the policy of favoring arbitration.[250] *Bituminous Coal* combined the Declaratory Judgments Act, Taft-Hartley section 301, and *U.S. Steel* to potentially create an additional exception to Norris-LaGuardia to support the policy of favoring peaceful dispute settlement. The pre-Norris-LaGuardia abuses of labor unions have disappeared. The Third Circuit has apparently recognized that reality and directed its energy to fulfilling its Taft-Hartley section 301 obligation to enforce promises exchanged during the collective bargaining process.

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[243] *Id.* at 594, 597.

[244] *Id.* at 596; 28 U.S.C. § 2202 (1976).

[245] 534 F.2d at 1077.

[246] Republic Steel Corp. v. UMW, 570 F.2d at 473–74.

[247] 585 F.2d at 595.

[248] *Id.* at 590. The litigation alone is staggering. From January 1, 1972 to December 21, 1977, over 300 cases naming UMW as defendant were brought in the district court for the western district of Pennsylvania. 570 F.2d at 480 n.18. *See* notes 12–15 *supra* and accompanying text.

[249] 570 F.2d at 479. Because the coal miners regard themselves as members of the International rather than the district or local unions, the International may be held in a position of respected leadership. *Id.*

[250] 398 U.S. at 251.