LABOR LAW—DAMAGES—INTERNATIONAL UNION NOT LIABLE IN DAMAGES FOR UNAUTHORIZED STRIKE AT LOCAL UNION LEVEL—*Carbon Fuel Co. v. United Mine Workers of America*, 100 S. Ct. 410 (1979).

American labor law since 1944 has embraced exclusivity, the concept that a union is the sole bargaining agent for a group of employees.[1] Notwithstanding this policy, there has been confusion as to that agent's responsibility for unauthorized employee actions that breach the collective bargaining agreement.[2]

The Court of Appeals for the Third Circuit in *Eazor Express, Inc. v. International Brotherhood of Teamsters*[3] had formulated one answer to this question by holding the union responsible for wildcat or unauthorized strikes both under an express no-strike clause and on the theories of mass-action and agency. The Court of Appeals for the Fourth Circuit in *United Construction Workers v. Haislip Baking Co.*[4] had taken the opposite approach relieving the union of responsibility when there had been no union ratification, authorization, or encouragement of the strike.

The conflict between the circuits was finally addressed by the Supreme Court in *Carbon Fuel Co. v. United Mine Workers.*[5] Justice Brennan, in a unanimous opinion, framed the issue as "whether an international or district union may be held legally responsible for locals' unilateral actions which are concededly in violation of the locals' responsibilities under the contract."[6] The Court decided that, absent instigation or support, the international and district unions were not liable.[7]

The Court's resolution, however, belied the scope of the issue. The decision in *Carbon Fuel* has widespread implications for the en-

---

[1] J.I. Case Co. v. NLRB, 321 U.S. 332 (1944). This case held that it was an unfair labor practice for an employer to refuse to bargain collectively on the ground that individual employee contracts are in effect. *Id.* at 339.

[2] *Compare* Eazor Express, Inc. v. International Bhd. of Teamsters, 520 F.2d 951 (3d Cir. 1975) *with* United Constr. Workers v. Haislip Baking Co., 223 F.2d 872 (4th Cir. 1955). *See* text accompanying notes 3-4 *infra*.

[3] 520 F.2d 951, 959-64 (3d Cir. 1975).

[4] 223 F.2d 872, 877-79 (4th Cir. 1955).

[5] 100 S. Ct. 410 (1979).

[6] *Id.* at 413 n.5. The locals had previously been held liable under the mass action theory of responsibility. *See* Carbon Fuel Co. v. UMWA, 582 F.2d 1346, 1349-50 (4th Cir. 1978), *aff'd*, 100 S. Ct. 410 (1979).

[7] 100 S. Ct. at 413.

forcement of arbitration clauses and the interpretation of implied no-strike clauses.[8]

The National Bituminous Coal Wage Agreement of 1971 was the collective bargaining contract that covered the relationship between Carbon Fuel Co. (Carbon Fuel) and United Mine Workers of America (UMWA).[9] The UMWA was the sole bargaining agent for the employees.[10] The contract became effective on November 12, 1971 but expired before the controversy entered litigation.[11]

An understanding of the organizational structure of the UMWA is fundamental to an appreciation of *Carbon Fuel*. A three-tiered structure governs the union, with the International UMWA (International) at the uppermost tier, exercising power over major decisions.[12] The district unions of the UMWA (District) are located in the area of the coal fields while the locals comprise the lowest level of authority and "are essentially self-governing bodies."[13]

Three local unions instigated forty-eight strikes from 1969 to 1973 at various Carbon Fuel mines in West Virginia.[14] The trial court found these wildcat strikes[15] in violation of the collective bargaining agreement as a matter of law.[16] This conclusion was not appealed.[17]

Although the International had expressed an intention in 1966 to discipline the errant strikers, their efforts to do so were largely un-

---

[8] Although Justice Brennan disclaimed any intention of disturbing prior labor law as it related to arbitration clauses, 100 S. Ct. at 413 n.5, this note will strongly suggest that the Court is now looking differently at arbitration clauses and their implied results than it has in the past. *See* notes 87-92 *infra* and accompanying text.

[9] Carbon Fuel Co. v. UMWA, 582 F.2d 1346, 1348 (4th Cir. 1978), *aff'd*, 100 S. Ct. 410 (1979).

[10] 100 S. Ct. at 412.

[11] Carbon Fuel Co. v. UMWA, 582 F.2d 1346, 1348 (4th Cir. 1978), *aff'd*, 100 S. Ct. 410 (1979). *See* note 25 *infra* and accompanying text. Although some of the actual strikes in question took place before the 1971 contract became effective, the relevant provisions were brought forward "essentially unchanged" from the predecessor 1968 agreement. 100 S. Ct. at 415-16.

[12] *See* Note, *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), 10 SETON HALL L. REV. 471, 471 n.2 (1979) [hereinafter cited as Note, SETON HALL L. REV.].

[13] *Id.*

[14] Carbon Fuel Co. v. UMWA, 582 F.2d 1346, 1347-48 (4th Cir. 1978), *aff'd*, 100 S. Ct. 410 (1979).

[15] 100 S. Ct. at 412. Due to many factors, the coal industry has a long history of wildcat strikes. *See generally* Note, *Prospective Boys Markets Injunctions*, 90 HARV. L. REV. 790, 795-98 (1977) [hereinafter cited as Note, HARV. L. REV.].

[16] Carbon Fuel Co. v. UMWA, 582 F.2d 1346, 1348 (4th Cir. 1978), *aff'd*, 100 S. Ct. 410 (1979).

[17] 100 S. Ct. at 413 n.3.

successful.[18] The company notified the International and the District at the outset of each strike, none of which lasted longer than six days.[19] A district representative met with the wildcatters for each strike and, threatening them with disciplinary action,[20] ordered them to return to work.[21] The District and the International, in an effort to keep the situation as calm as possible, never imposed any disciplinary sanctions.[22]

Carbon Fuel initiated this action pursuant to section 301 of the Labor Management Relations Act of 1947 (Taft-Hartley Act)[23] in the United States District Court for the Southern District of West Virginia.[24] Seeking injunctive relief[25] and damages, the complaint named the three local unions, District 17 and the International as defendants.[26] The trial court instructed the jury that District 17 and the International could be found liable if the evidence indicated " 'that the International and District Unions did not use all reasonable means available . . . to prevent work stoppages or strikes from occurring in violation of the contract,' "[27] and that "the Locals were acting within the scope of their authority as agents of the District and International."[28] The jury returned verdicts against all of the defendants.[29]

---

[18] *Id.* at 412 n.1.

[19] *Id.* "Most strikes ended in the first one or two days." *Id.*

[20] *Id.* The strength of the international union's leadership as it relates to the miners is not as strong as that of other national unions. Indeed, the union's efforts to stop wildcat strikes are deeply resented by the rank and file membership. *See* Note, HARV. L. REV., *supra* note 15, at 796.

[21] 100 S. Ct. at 412 n.1.

[22] *Id.*

[23] Labor-Management Relations (Taft-Hartley) Act § 301, 29 U.S.C. § 185 (1976). Section (a) provides:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act . . . 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.

[24] 100 S. Ct. at 412.

[25] *Id.* The collective bargaining agreement expired before the case was brought to trial; therefore, the question of injunctive relief was not considered. 100 S. Ct. at 412 n.2. It is also significant that all of the strikes were no longer than six days in duration, *see* note 19 *supra* and accompanying text, and that no injunctive relief could actually have been provided.

[26] 100 S. Ct. at 412.

[27] *Id.* (quoting App. 197).

[28] Carbon Fuel Co. v. UMWA, 582 F.2d 1346, 1350 (4th Cir. 1978), *aff'd*, 100 S. Ct. 410 (1979).

[29] *Id.* at 1348. The jury found the International liable for $206,547.80, District 17 liable for $242,130.80, and the three locals liable for $722,347.43. *Id.*

The court of appeals affirmed the judgment against the local unions,[30] but vacated the judgment against the International and District 17 and remanded for dismissal.[31] The court of appeals recited the bargaining history and stated that a "no-strike" and a "best efforts" clause had been deleted, decreasing the union's responsibility for unauthorized strikes.[32] The court concluded that the case fell "within the four corners of"[33] *Haislip*.[34] The District and International were thereby relieved of all liability.[35] This decision was in direct conflict with *Eazor Express*.[36] The Supreme Court, recognizing the conflict, granted certiorari.[37]

Carbon Fuel made two arguments to the Supreme Court in support of the obligations of the International and District 17 to use all reasonable means to stop all strikes violating the collective bargaining agreement. The first contention was that this obligation was implied in law from the arbitration provision contained in the contract.[38] The second argument asserted that the obligation to use best efforts to stop all wildcat strikes was implied also from the provision in the contract that stated that the parties " 'agree and affirm that they will maintain the integrity of this contract.' "[39] The Court found "no merit in either argument."[40]

The Court did not address the first argument; rather, Justice Brennan discussed the doctrine of agency. Section 301(b) of the Taft-Hartley Act[41] mandated that a union "shall be bound by the acts of its agents."[42] Justice Brennan asserted, however, that in formulat-

---

[30] *Id.* at 1351. The court of appeals reversed the judgments as to 17 of the strikes because they were found to be "sympathy strikes" and therefore fell under the *Buffalo Forge* exception. *Id.* at 1348-49. For a discussion of Buffalo Forge Co. v. United Steelworkers, 428 U.S. 397 (1976), 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). *See* notes 77-81 *infra* and accompanying text.

[31] Carbon Fuel Co. v. UMWA, 582 F.2d 1346, 1351 (4th Cir. 1978), *aff'd*, 100 S. Ct. 410 (1979).

[32] *Id.* at 1350-51.

[33] *Id.* at 1351.

[34] 223 F.2d 872 (4th Cir. 1955).

[35] Carbon Fuel Co. v. UMWA, 582 F.2d 1346, 1351 (4th Cir. 1978), *aff'd*, 100 S. Ct. 410 (1979).

[36] *See* notes 2-4 *supra* and accompanying text.

[37] Carbon Fuel Co. v. UMWA, 99 S. Ct. 1495 (1978).

[38] 100 S. Ct. at 413. *See* notes 67-69 *infra* and accompanying text.

[39] 100 S. Ct. at 413.

[40] *Id.*

[41] Labor-Management Relations (Taft-Hartley) Act § 301(b), 29 U.S.C. § 185(b) (1976).

[42] *Id.* Section 301 of the Taft-Hartley Act gives federal courts jurisdiction of disputes involving collective bargaining agreements. *See* note 25 *supra* and accompanying text.

ing section 301, Congress "stopped short of imposing liability upon a union for strikes not authorized, participated in, or ratified by it."[43] Since Congress intended to protect the parent unions from liability for the unauthorized acts of locals, "it would be anomalous to hold that an international is nonetheless liable for its failure"[44] to take more positive action to end the wildcat strikes. Justice Brennan reasoned that the International could not be held liable because Carbon Fuel failed to establish that the local unions were acting as agents of the International.[45]

The Court dismissed Carbon Fuel's second argument concerning the "maintenance of integrity" clause of the collective bargaining agreement.[46] While not specifically construing the clause, the Court did hold that the provision did not impose an obligation on the International and District 17 to end wildcat strikes.[47] Justice Brennan also stated that the Taft-Hartley Act protected free collective bargaining by assuring that neither party be coerced to agree to any proposal or to make any concessions.[48] A court, therefore, cannot insert its own terms into the agreement.[49]

Justice Brennan relied on the history of the bargaining agreement to refute the contention that the "maintenance of integrity" clause was synonymous with "best efforts."[50] The first contract between the parties in 1941 contained an express no-strike provision.[51] This clause was dropped in 1947 and was replaced by a provision that called for contractual coverage of those employees " 'able and willing to work.' "[52] In 1950 this language was deleted and the "maintain the integrity" phrase was added along with an obligation by the parties " 'to exercise their best efforts through available disciplinary measures' " to avoid strikes or lockouts.[53] Finally, in 1952, the "best efforts" clause was excised.[54]

Justice Brennan concluded that, since the "best efforts" clause had been deleted, the union had minimized its responsibility for

---

[43] 100 S. Ct. at 414.
[44] *Id.*
[45] *Id.*
[46] *Id.* at 416. *See* text accompanying note 39 *supra*.
[47] 100 S. Ct. at 416 & 416 n.9.
[48] *Id.* at 414-15. *See* National Labor Relations Act § 8(d), 29 U.S.C. § 158(d) (1970).
[49] 100 S. Ct. at 415-16.
[50] *Id.*
[51] *Id.* at 415.
[52] *Id.*
[53] *Id.*
[54] *Id.*

strikes.[55] It was obvious to Justice Brennan that "the parties purposely [had] decided not to impose on the union an obligation" to end an unauthorized strike.[56] Furthermore, as the locals had no authorization to strike, without agency, the International and District 17 could not be held liable.[57]

HISTORICAL PERSPECTIVE

The aim of national labor policy is to foster peaceful resolutions of disputes.[58] One avenue by which employers and unions can arrive at agreeable compromises is through the utilization of arbitration clauses included in the collective bargaining agreement.[59] In fact there has been general agreement since 1957 that an arbitration clause "is the *quid pro quo* for an agreement not to strike."[60]

This *quid pro quo* was first articulated in *Textile Workers v. Lincoln Mills*,[61] which held that an employer was required to arbitrate a dispute in return for the union's promise not to strike.[62] In 1960 the *Steelworker's Trilogy*[63] reiterated the importance of arbitration pro-

---

[55] *Id.* at 416. Justice Brennan wrote, "It makes no sense to assume that the parties thought the new language subsumed the deleted provision. Had that been their intention, there would have been no reason to alter the contract." *Id.*

[56] *Id.* at 416. The court of appeals reasoned that to interpret the "maintain the integrity" clause in the manner proposed by Carbon Fuel would be to rewrite "the terms of the contract upon which the parties agreed." Carbon Fuel Co. v. UMWA, 582 F.2d 1346, 1350 (4th Cir. 1978).

[57] 100 S. Ct. at 414. *See* text accompanying notes 41-45 *supra*.

[58] National Labor Relations Act, 29 U.S.C. § 151 (1970). The Act states: "It is declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce . . . by encouraging the practice and procedure of collective bargaining." *Id.* at § 1. The Labor Management Relations (Taft-Hartley) Act § 201, 29 U.S.C. § 171 (1976) provides:

> Sec. 171. That it is the policy of the United States that—
>
> (a) sound and stable industrial peace and the advancement of the general welfare, health, and safety of the Nation and of the best interest of employers and employees can most satisfactorily be secured by the settlement of issues between employers and employees through the processes of conference and collective bargaining between employers and the representatives of their employees.

Id.

[59] *See generally* Comment, *Injunctions Restraining Employers Pending Arbitration: Equity and Labor Policy*, 82 DICK. L. REV. 487 (1978) [hereinafter cited as Comment]. "It is beyond dispute that arbitration has been accorded a favored position in national labor policy." *Id.* at 488.

[60] Textile Workers v. Lincoln Mills, 353 U.S. 448, 455 (1957). If a union has agreed not to strike, it is only reasonable that the employer should arbitrate disputes that may arise.

[61] *Id.*

[62] *Id.*

[63] United Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593 (1960); United Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960); United Steelworkers v. American Mfg. Co., 363 U.S. 574 (1960).

visos. Those Supreme Court cases held that the courts should not review the arbitrator's decision,[64] that all disputes except those expressly excluded in the contract should be submitted to arbitration,[65] and that the courts were not to weigh the factors in the grievance: their sole decision concerned whether the grievance was arbitrable under the terms of the arbitration clause in the contract.[66]

In subsequent cases, the Court utilized those pro-union holdings to restrict union activity. In 1962 the Supreme Court held that a no-strike provision would be *implied* in a collective bargaining agreement when there was an arbitration clause.[67] In that decision, *Local 174, Teamsters v. Lucas Flour*,[68] the union was held liable in damages when it breached that implied no-strike clause.[69] In 1970 *Boys Market, Inc. v. Retail Clerks Union*[70] held that a strike in violation of a no-strike clause could be enjoined to allow the parties to arbitrate the dispute that gave rise to the strike.[71]

The implication of a no-strike clause has had significant consequences for unions and employers when arbitrable conflicts have arisen.[72] In 1974 the Supreme Court held in *Gateway Coal Co. v. United Mine Workers*[73] that an implied no-strike clause could be the basis for enjoining a strike over safety conditions pending arbitration. That case dealt with the National Bituminous Coal Wage Agreement of 1968[74] which contained provisions which were "essentially unchanged" in the *Carbon Fuel* contract.[75] Although the strike in

---

[64] United Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593, 599 (1960). "[T]he courts have no business overruling [the arbitrator] because their interpretation of the contract is different from his." *Id.*

[65] United Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 574, 584-85 (1960).

[66] United Steelworkers v. American Mfg. Co., 363 U.S. 563, 568 (1960).

[67] Local 174, Teamsters v. Lucas Flour, 369 U.S. 95, 105-06 (1962). For an excellent history of the relationship between a no-strike clause and arbitration clause, see Note, SETON HALL L. REV., *supra* note 12, at 481-88.

[68] 369 U.S. 95 (1962).

[69] *Id.* at 105-06.

[70] 398 U.S. 235 (1970).

[71] *Id.* at 254-55. In so holding, the Court accommodated the Norris-LaGuardia Federal Anti-Injunction Act, 29 U.S.C. §§ 101-15 (1976) with section 301 of the Taft-Hartley Act. A detailed discussion of the conflict between the Taft-Hartley Act and the Norris-LaGuardia Act is beyond the scope of this note. It is sufficient for the purposes of this work to realize that Norris-LaGuardia prohibits issuing injunctions against strikes while Taft-Hartley gives jurisdiction to federal courts to enforce collective bargaining agreements. For an analysis of the conflict, see Comment, *supra* note 59, at 488-89.

[72] The Supreme Court in Buffalo Forge v. United Steelworkers, 428 U.S. 397 (1976), held that strikes may not be enjoined if the dispute itself is not arbitrable. *Id.* at 407-13. An example of such a dispute is a sympathy strike.

[73] 414 U.S. 368 (1974).

[74] *Id.* at 374.

[75] *Carbon Fuel*, 100 S. Ct. at 416.

Gateway Coal was arguably a wildcat strike,[76] the issue of union responsibility for unauthorized strikes was never before the Court.

The Supreme Court in the 1976 case of *Buffalo Forge v. United Steelworkers*[77] may have cut back on *Boys Markets* and *Gateway Coal*. The Buffalo Forge union went out on a sympathy strike, that is, the union refused to cross the picket line of another union.[78] Since the strike was not over a dispute with the employer,[79] it became questionable whether the strike was in violation of the no-strike clause.[80] The Court held that a strike by a union may not be enjoined when the legality of the strike itself was the arbitrable issue.[81]

Were the disputes leading to the strikes in *Carbon Fuel* arbitrable? If they were, the Court, under *Steelworker's Trilogy*, should have ordered arbitration to settle the dispute.[82] Had the court applied *Lucas Flour*, however, it could have held the union liable in damages for striking in violation of the implied obligations not to strike pending arbitration.[83] *Steelworker's Trilogy* and *Lucas Flour* would then seem to be inherently inconsistent. In finding a union liable for a breach of an implied no-strike clause under *Lucas Flour*, a court must perform the function specifically reserved to the arbitrator under the *Steelworker's Trilogy*—the resolution of all disputes except those expressly excluded from the arbitration clause of the contract. This analysis relies on the rationale that strikes are indeed disputes, a proposition generally not adhered to by the Supreme Court.

---

[76] 414 U.S. at 372. The miners walked off the job the same day that two foremen who had violated safety regulations were reinstated. *Id.* While it is unclear whether the original walkout was sanctioned by the International, it was stated that the International subsequently refused to arbitrate, thereby authorizing the strike. *Id.* But it is important to remember that the controversy in *Gateway Coal* concerned the issuance of an injunction. In *Carbon Fuel* the controversy was over holding the union liable for damages. If the Court in *Carbon Fuel* had been forced to consider issuing an injunction against the strikes the result may well have been different. In Pittsburgh-Des Moines Steel Co. v. USWA, No. 79-2435 (3d Cir. Aug. 6, 1980), Judge Gibbons wrote that the International Union in that case could be ordered to take affirmative steps to stop an unauthorized strike if specific performance was "necessary or helpful." *Id.* at 11. The court decided, however, that an injunction was inappropriate in *Pittsburgh-Des Moines Steel*. *Id.* at 12. *See also* notes 91-92 *infra* and accompanying text.

[77] 428 U.S. 397 (1976).

[78] *Id.* at 399-402.

[79] *Id.*

[80] *Id.* at 405.

[81] *Id.* at 407-13. The Court refused to bypass the grievance and arbitration procedures of the collective bargaining agreement. *Id.* at 410-13.

[82] *See* notes 63-66 *supra* and accompanying text.

[83] *See* notes 67-69 *supra* and accompanying text. There was an implied no-strike clause in the contract. *See* notes 75-77 *supra* and accompanying text.

If the Court should find the union liable for striking, has it also decided the arbitrable issue? *Buffalo Forge* would require an affirmative answer when the strike itself is the dispute.[84] The strike would constitute the dispute if the union where honoring the picket line of another union. Seventeen of the forty-eight strikes in *Carbon Fuel* had been sympathy strikes.[85] The Court therefore should have taken no action on these strikes except to submit the issue of their legality to an arbitrator. It is arguable that a finding of liability for the remaining thirty-one strikes would have been contrary to *Steelworker's Trilogy*, since it is a matter properly reserved for arbitration. In holding the union liable, the Court would have had to interpret the contract to find that the unions should have arbitrated.

The *Carbon Fuel* Court has *de facto* rejected the rule of *Steelworker's Trilogy*. The Court interpreted the contract in an analysis of union responsibility for wildcat strikes—an undertaking clearly reserved for an arbitrator under *Steelworker's Trilogy*.[86] At the same time, the Court refused to hold the union liable in damages, under *Lucas Flour*, for a violation of an implied obligation not to strike over arbitrable disputes. The Court has, therefore, raised serious questions as to the viability of both *Steelworker's Trilogy* and *Lucas Flour*.

DISCUSSION

The Court settled the dispute between Carbon Fuel and the UMWA when the collective bargaining agreement clearly called for an arbitrator to settle disputes over contract interpretation.[87] The unanimous Court came to this conclusion after reviewing the history of the collective bargaining agreement.[88] It is suggested here that this type of analysis was conceptually different from the analysis previously employed by the Court. In the past, the Court had viewed strikes as being inconsistent with negotiated arbitration clauses.[89] The *Carbon Fuel* Court, however, treated the obligation not to strike as a term to be negotiated. In *Carbon Fuel* the parties had bargained out the no-strike clause;[90] therefore, the Court held that the union was under no obligation to end the wildcat strikes.

---

[84] *See* notes 77-81 *supra* and accompanying text.

[85] Carbon Fuel v. UMWA, 582 F.2d 1346 (4th Cir. 1978).

[86] *See* notes 63-66 *supra* and accompanying text.

[87] *See* Gateway Coal Co. v. UMWA, 414 U.S. 368, 374-75 n.6 (1974).

[88] *See* notes 50-56 *supra* and accompanying text.

[89] *See* Gateway Coal Co. v. UMWA, 414 U.S. 368 (1974); Boys Markets, Inc. v. Retail Clerks Union, 398 U.S. 235 (1970); Local 174, Teamsters v. Lucas Flour, 369 U.S. 95 (1962).

[90] *See* notes 51-52 *supra* and accompanying text.

The Court in the past would have understood the *Carbon Fuel* strike as being in direct opposition to the obligation to arbitrate. Had the strikes been ongoing, it is possible that an injunction would have issued and the UMWA would have been ordered to arbitrate the dispute.[91] By its failure to use all reasonable means to end the *Carbon Fuel* strikes, then, the UMWA arguably should have been liable in damages.[92]

While Justice Brennan traced the history of the contract, he refrained from construing the "maintain the integrity" phrase of the collective bargaining agreement.[93] The provision must at least be read to impose an obligation on both parties to use all reasonable means to abide by the terms of the contract. Even using the Court's new mode of analysis, the phrase could not be read as mere superfluous wordage. It could have been deleted, but was not, along with the "best efforts" clause. The "maintain the integrity" clause, therefore, adds substantive meaning to the contract.

The term "best efforts" may have been eliminated because it was evasive of definition and application. It would not have been as difficult, however, to determine whether "all reasonable means" were used by the UMWA to end wildcat strikes in the instant case. It would appear that the obligation to use all reasonable means would include "an obligation to take disciplinary or other actions to get unauthorized strikers back to work."[94]

The proposed definition of the "maintain the integrity" phrase could provide relief for employers even if the Court continues to view union responsibility for strikes as an undertaking to be bargained for. The union would remain under an obligation to use all reasonable means to end wildcat strikes. The contract would otherwise be meaningless to employers confronted with illegal activity at the local union level. It can also be seriously argued that, under its implied no-strike clause, the UMWA in this case had a day-to-day commitment to end

---

[91] *See generally* Gateway Coal Co. v. UMWA, 414 U.S. 368 (1974); Boys Markets, Inc., v. Retail Clerks Union, 398 U.S. 235 (1970).

[92] *Accord*, Local 174, Teamsters v. Lucas Flour, 369 U.S. 95 (1962) (strike in violation of collective bargaining agreement with arbitration provision entitles employer to damages).

[93] Justice Brennan did refer to International Union, UMWA v. NLRB, 257 F.2d 211 (D.C. Cir. 1958), for one interpretation. 100 S. Ct. at 416 n.9. That case formulated the following proposed definition: "We think it was, in effect, a 'gentlemen's agreement' that the desirable way to settle disputes was by the use of the grievance machinery." International Union, UMWA v. NLRB, 257 F.2d 211, 218 (D.C. Cir. 1958).

[94] 100 S. Ct. at 416.

industrial strife.[95] The parent union, as the negotiator of the contract, must recognize its responsibility to maintain industrial peace.

CONCLUSION

The requirement that the local union be acting with authority to strike was pivotal to the *Carbon Fuel* analysis of union responsibility.[96] That analysis ignored the traditional questions of union liability for illegal strikes. It is foreseeable that now all unions will be able to shelter themselves from accountability by interposing districts, locals, and agents with no authority. Encouraging employees to arbitrate grievances so that employer-employee relations remain stable, however, is an issue of great immediacy. It will be impossible for management to conduct meaningful labor policies when the bargaining agent with whom management deals cannot be held liable for the employees' illegal actions.[97]

The Supreme Court is changing the direction of its previous arbitration—no-strike decisions.[98] Rather than perceiving illegal strikes as inimical to labor relations, the Court is now examining the contract and searching for the parties' intent. In *Carbon Fuel*, the Court found that the parties intended to relieve the UMWA of responsibility for wildcat strikes. It remains to be seen whether this method of analysis will herald a new era of illegal local union activity.

Joseph A. Dickson

---

[95] *See* Conley v. Gibson, 355 U.S. 41 (1941). "Collective bargaining is a continuing process. Among other things, it involves day-to-day adjustments in the contract and other working rules, resolution of new problems not covered by existing agreements, and the protection of employee rights already secured by contract." *Id.* at 46. *See also* Republic Steel Corp. v. UMWA, 570 F.2d 467 (3d Cir. 1978). "Indeed, the essence of our analysis of the *quid pro quo* nature of the labor contract would indicate that where there is an industry-wide contract, there is an *industry-wide commitment* to the peaceful settlement of grievances." *Id.* at 479 (emphasis in original).

[96] *See* notes 41-45 *supra* and accompanying text.

[97] The problem is that "UMWA enjoys the ease of bargaining with [Carbon Fuel] alone, in behalf of its members, but yet seeks not to be bound to [Carbon Fuel] when [Carbon Fuel] attempts to enforce the contract in behalf of the same members." Bituminous Coal Operators, Inc. v. International Union, UMWA, 431 F. Supp. 774, 787 (W.D. Pa. 1977).

[98] *See* notes 88-92 *supra* and accompanying text.