Journal of Dispute Resolution

Volume 1994 | Issue 2 Article 6

1994

Union Walks in the Sixth: The Integrity of Mandatory Non-Binding Grievance Procedures in Collective Bargaining Agreements - AT & (and) T v. Communications Workers of America, AFL-CIO, The

Mark Riley Kroeker

The Union Walks in the Sixth: The Integrity of Mandatory Non-Binding Grievance Procedures in Collective Bargaining Agreements

AT&T v. Communications Workers of America, AFL-CIO[1]

I. INTRODUCTION

There are many mechanisms short of industrial action which labor unions and employers use to resolve disputes. Anticipating conflict, but aiming to avoid industrial action, the two parties might place an arbitration agreement or other mandatory grievance adjustment procedure into their collective bargaining agreement. This agreement will reflect the parties' understanding as to how disputes are to be resolved. This Note examines the limited circumstances in which the federal courts will enjoin union protest activity carried out in violation of a collective bargaining agreement's provisions regarding dispute resolution. It focuses on the analytic inconsistency of the judicial refusal to enjoin union activities carried out in violation of a collective bargaining agreement during the pendency of a mandatory dispute resolution procedure other than arbitration.

II. FACTS AND HOLDING

This case arises out of a labor subcontracting dispute between the Communication Workers of America, AFL-CIO ("Union") and the American Telegraph and Telephone Company ("AT&T").[2] The Union appealed an order of the United States District Court for the Southern District of Ohio enjoining certain union protest activities.[3] The dispute involved a decision by AT&T to subcontract certain line work to another company which the Union claimed was reserved for AT&T employees under the parties' "Operations" collective bargaining agreement.[4]

In compliance with the bargaining agreement, the Union filed a grievance with AT&T.[5] Under the terms of the agreement subcontracting disputes were to be handled pursuant to a specified non-binding grievance procedure.[6] The procedure mandated a series of meetings between Union and AT&T representatives, of increasing authority, with the goal of negotiating a voluntary

1. 985 F.2d 855 (6th Cir. 1993).
2. *Id.* at 856.
3. *Id.* at 857.
4. *Id.* at 856.
5. *Id.* at 857.
6. *Id.* at 856-57.

resolution.[7] After filing its grievance the Union undertook additional protest activities which included hand-billing, informational picketing at various locations, and indirect pressure on a company used by AT&T for package delivery.[8]

AT&T filed suit in district court seeking a temporary restraining order and a preliminary injunction to prevent the Union from continuing its protest activities.[9] Finding that the Union had violated the terms of the collective bargaining agreement by attempting resolution of the dispute by means other than those provided for in the collective bargaining agreement, the district court granted the restraining order and preliminary injunction.[10]

The Union claimed the preliminary injunction violated the anti-injunction provision of the Norris-LaGuardia Act.[11] This provision precludes district courts from enjoining "any person or persons participating or interested in [a labor] dispute . . . from . . . [g]iving 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."[12]

The district court found the injunction proper under an exception to the Norris-LaGuardia Act recognized by the Supreme Court in *Boys Markets, Inc. v. Retail Clerks Union*.[13] The *Boys Markets* Court held that an exception to the Norris-LaGuardia Act exists "in situations where the labor dispute is subject to 'a mandatory grievance adjustment or arbitration procedure.'"[14] Relying on this language, the district court interpreted the words "grievance adjustment" as mandating the application of the *Boys Markets* exception to grievance procedures similar to those in the instant case.[15]

The court of appeals perceived a conflict between the district court's decision and the "policy" behind the *Boys Markets* decision "that the exception only [applies] when the dispute is subject to arbitration before an impartial third party."[16] It also perceived a conflict between the district court's decision and the "central purpose" of the Norris-LaGuardia Act to "foster the growth and viability

---

7. *Id.* at 857. The agreement also stated that its non-binding grievance provisions "provide the mutually agreed upon and exclusive forums for resolution and settlement of employee disputes during the term of th[e] Agreement." The agreement further provided that "[n]either the Company, nor the Union, its locals or representatives will attempt by means other than the grievance, arbitration, and/or mediation procedures to bring about the resolution of any issue which is properly a subject for disposition through such procedures." *Id.*

8. *Id.* Early in the dispute, the Union voluntarily ceased picketing the facilities of Radio Shack, an AT&T customer for whom the disputed work was subcontracted. It was alleged that the Union violated the secondary boycotts prohibition of the National Labor Relations Act, 29 U.S.C. § 158(b)(4)(ii)(B). *Id.* at 857 n.1.

9. *Id.* at 857.

10. *Id.*

11. *Id.* at 856.

12. *Id.* (quoting 29 U.S.C. § 104 (1932)).

13. 398 U.S. 235 (1970).

14. *AT&T*, 985 F.2d at 856 (quoting *Boys Markets*, 398 U.S. at 235).

15. *Id.* at 858.

16. *Id.*

of labor organizations."[17] Pointing out that the *Boys Markets* decision involved a grievance provision that provided for mandatory arbitration and not, as in the instant case, the submission of disputes to non-binding negotiation, the court of appeals reversed.[18] The case was remanded to the district court with instructions to vacate the preliminary injunction.[19]

III. LEGAL BACKGROUND

In the history of American labor relations, federal courts have not always been neutral forums for the resolution of disputes between workers and employers.[20] In the early decades of this century the federal judiciary was generally hostile to the interests of the labor movement.[21] Management could generally rely on this hostility when seeking injunctions, often sweeping in scope, to enforce "yellow-dog" labor contracts,[22] and other such devices, in disputes with labor.[23]

It was this biased intervention of the federal courts on behalf of employers that Congress addressed in passing the Norris-LaGuardia Act in 1932.[24] Section 4 of the Act specifically denied the federal courts jurisdiction to enter injunctions preventing labor from undertaking any non-fraudulent, non-violent actions in cases arising out of labor disputes.[25] The legislation effectuated a federal labor policy

---

17. *Id.*

18. *Id.* at 860.

19. *Id.*

20. *See generally* Catherine A. Vance, *Secondary Picketing in Railway Labor Disputes: A Right Preserved Under the Norris-LaGuardia Act*, 55 FORDHAM L. REV., 203, 216-21 (1986); Arthur S. Leonard, *Specific Performance in Collective Bargaining Agreements*, 52 FORDHAM L. REV. 193 (1983). The nature of the federal court activities that contributed to the passage of the Norris-LaGuardia Act is also discussed in *Boys Markets*, 398 U.S. at 250.

21. *See* Vance, *supra* note 20; Leonard, *supra* note 20.

22. A "yellow dog" contract was described in a Senate Report on the Norris-LaGuardia Act as:

> [O]ne which requires the employee, as a condition of obtaining employment, to agree that he will not join a union while he is in such employment, or, that if he is then a member of a union, he will disassociate himself . . . from it; that he will not quit [sic] without giving to his employer notice sufficient to enable to the employer to hire some one to take his place. Such contracts frequently require the employee to agree in advance to accept such conditions of labor, hours of labor, etc., as may from time to time be decided upon by his employer . . . . In all of them the employee waives his right of free association and genuine representation in connection with his wages, the hours of labor and other conditions of employment. In other words, he surrenders his actual liberty of contract and to a great extent he enters into involuntary servitude.

S. REP. NO. 163, 72d Cong., 1st Sess. 14 (1932) (quoted in Vance, *supra* note 20, at 217 n.83).

23. *See* Vance, *supra* note 20; Leonard, *supra* note 20.

24. *Id.*

25. Section 4 reads:

> No court of the United States shall have jurisdiction to issue any restraining 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 . . . [c]easing or refusing to perform any work or to

which broadly aimed to protect the nascent labor movement by prohibiting the federal courts from using injunctive relief to enforce unconscionable labor agreements and practices.[26]

If the yellow-dog labor contract was the symbol of industry power operating until the passage of the Norris-LaGuardia Act, the collective bargaining agreement represents the more balanced relationship between workers and employers that has since emerged. The product of comprehensive negotiation, a collective bargaining contract typically encompasses a host of agreements which govern employer-worker relations in a variety of settings, and often anticipates the resolution of future disputes.

Partly to effectuate this more peaceable expression of labor-employer relations, Congress passed the Taft-Hartley Act in 1947.[27] Section 301 of the Taft-Hartley Act grants the federal courts' jurisdiction to settle disputes in which one party acts in violation of a collective bargaining agreement.[28]

But do the federal courts have jurisdiction to enjoin a labor union from undertaking protest activities in violation of a collective bargaining agreement which provides for dispute resolution through other means, such as arbitration or a structured mediation? Although not expressly mentioning injunctive relief, Section 301 of Taft-Hartley suggests that federal courts have this jurisdiction by broadly bestowing jurisdiction to hear "[s]uits for violation of contracts between an employer and a labor organization representing employees in industry."[29] The Norris-LaGuardia Act, on the other hand, expressly forbids an injunction issuing in "any case involving or growing out of any labor dispute."[30]

The conflict between Taft-Hartley and the Norris-LaGuardia Act came to a head in *Sinclair v. Atkinson*.[31] Under *Sinclair*, the Norris-LaGuardia Act's prohibition of federal courts issuing injunctions, in cases arising out of labor disputes, was interpreted to also proscribe injunctions which would seemingly otherwise be permissible under Taft-Hartley's broad grant of the right to sue in federal court, in cases where the union carried out its activities in violation of a collective bargaining agreement.[32] The dispute in *Sinclair* involved a series of work stoppages and strikes by the union in plain and deliberate contravention of a collective bargaining contract which provided for compulsory arbitration of "any

---

remain in any relation of employment . . . [g]iving 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 . . . [a]dvising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified . . . .

29 U.S.C. § 103 (1932).

26. *Boys Markets*, 398 U.S. at 250-51.
27. *See* Leonard, supra note 20, at 208-13.
28. 29 U.S.C. § 185 (1947).
29. *Id.*
30. 29 U.S.C. § 103 (1932).
31. 370 U.S. 195 (1962).
32. *Id.* at 214.

difference regarding wages, hours or working conditions between the parties."[33] In addition, the agreement expressly proscribed slowdowns, strikes or work stoppages for any reason having to do with the grievance.[34] The employer ("Sinclair"), claiming there was no adequate remedy at law which would protect its contractual rights, requested a permanent order enjoining the union from its activities in violation of the agreement.[35]

In an opinion by Justice Black, the Court held that the legislative history of Section 301 of the Taft-Hartley Act indicated Congress did not intend, by its enactment, to overrule the anti-injunction provision of Section 4 of the Norris-LaGuardia Act.[36] Furthermore, injunctions were found unnecessary to make arbitration successful.[37] There was, in the Court's opinion, simply no conflict between a federal labor policy encouraging the use of arbitration in the resolution of grievance disputes and a general prohibition of the use of injunctions against unions.[38] Such a prohibition did "not impair the right of an employer to obtain an order compelling arbitration of any dispute that may have been made arbitrable by the provisions of an effective collective bargaining agreement."[39] By implication Justice Black also was referring to the availability of other remedies, presumably breach of contract damages, which apparently, Sinclair was successful in obtaining from the trial court.[40]

In *Boys Markets*, the Supreme Court, in an opinion written by Justice Brennan, reversed its earlier decision and essentially adopted Brennan's dissent in *Sinclair*.[41] *Boys Markets* involved a dispute concerning the use of laborers who were not members of the union bargaining unit.[42] The union and employer were both parties to a collective bargaining agreement which provided that "all controversies concerning [the agreement's] interpretation or application should be resolved by adjustment and arbitration procedures set forth therein . . . ."[43] The agreement further provided that "during the life of the contract, there should be 'no cessation or stoppage of work, lock-out, picketing or boycotts . . . .'"[44]

The union called a strike and began picketing Boys Markets' premises.[45] After demanding that the work stoppage and picketing cease, and seeking to invoke the grievance and arbitration procedures specified in the collective bargaining agreement, Boys Markets sought a temporary restraining order,

---

33. *Id.* at 197.
34. *Id.*
35. *Id.* at 197-98.
36. *Id.* at 205.
37. *Id.*
38. *Id.* at 214.
39. *Id.*
40. *Id.* at 198 n.3.
41. *Boys Markets*, 398 U.S. at 238.
42. *Id.* at 239.
43. *Id.* at 238.
44. *Id.* at 238-39.
45. *Id.* at 239.

preliminary and permanent injunctions, and specific performance of the contractual arbitration provision in state court.[46] After the state court issued a temporary restraining order, the union removed to federal district court.[47] The district court concluded that the dispute was subject to arbitration under the collective bargaining agreement.[48] It ordered that the dispute be submitted to arbitration and enjoined the strike.[49] Considering itself bound by the rule of decision in *Sinclair*, the Ninth Circuit Court of Appeals reversed, denying Boys Markets' prayer for injunctive relief.[50]

In reversing the court of appeals,[51] the Supreme Court articulated several foundations for abandoning its holding in *Sinclair*. The court determined that *Sinclair* represented "a significant departure from [the Court's] otherwise consistent emphasis upon the congressional policy to promote the peaceful settlement of labor disputes through arbitration."[52] Perceiving a shift in congressional policy "from protection of the nascent labor movement to the encouragement of collective bargaining and to administrative techniques for the . . . resolution of industrial disputes," the Court identified its task as accommodating and reconciling older statutes, such as the Norris-LaGuardia Act, with more recent ones, more consistent with the current federal labor policy.[53]

In this regard, the Court found a conflict between its decision in *Sinclair*, and its subsequent decision in *Avco Corp. v. Aero Lodge 735*.[54] The Court in *Avco* held that suits initially brought in state courts to enforce binding arbitration agreements under Section 301 of the Taft-Hartley Act were removable pursuant to 28 U.S.C. Section 1441.[55] This decision upholding federal jurisdiction potentially conflicted with *Sinclair*'s strict enforcement of the provisions of the Norris-LaGuardia Act which denied the federal court's jurisdiction to prevent unions from promoting their cause in ways possibly inconsistent with arbitration procedures agreed in a collective bargaining agreement.[56] In addition, the rule undercut the authority of state courts, which are not bound by the provisions of the Norris-LaGuardia Act, to order injunctive relief by providing for removal to federal courts, who might then be required to dissolve injunctive relief previously granted by the state courts.[57] This, according to the Court, produced "an

46. *Id.* at 239-40.
47. *Id.* at 240.
48. *Id.*
49. *Id.*
50. *Id.* at 238.
51. *Id.*
52. *Id.* at 241.
53. *Id.* at 251.
54. *Id.* at 241. Avco Corp. v. Aero Lodge 735, 390 U.S. 557 (1968).
55. *Avco*, 390 U.S. at 560.
56. *See Id.* at 560-61.
57. *See Id.* at 560-61.

untenable situation" that called for a reconsideration of *Sinclair*, or its extension to the States.[58]

Next, the Court noted that in addition to the enactment of Taft-Hartley and its decision in *Avco*, historical changes in American labor relations made strict enforcement of the anti-injunction provisions of the Norris-LaGuardia Act inappropriate. Noting the historical context in which the Act was passed, the Court recognized that federal courts at the time the Act was passed "generally were regarded as allies of management in its attempt to prevent the organization and strengthening of labor unions."[59] The Norris-LaGuardia Act, the Court further recognized, was a response to judicial behavior, attempting to limit the involvement of the federal courts in labor disputes on behalf of management by denying them the use of injunctive relief.[60] The Court, however, noted a change in congressional policy as the labor movement grew in strength and maturity, from "protection" of the labor movement to encouraging "techniques" for resolution of disputes.[61] Subsequent legislation, enacted in a different historical context, sought to effectuate policies seemingly in conflict with those Norris-LaGuardia was enacted to achieve.[62] The Court also recognized the limits of non-injunctive relief, including contract damages and employee discharge, as remedies for harm done to an employer by union activities carried on in breach of a collective bargaining agreement.[63]

Sinclair clearly undermined the effectiveness of arbitration, a favored alternative to less peaceable methods of dispute resolution.[64] It was clear to the Court that unless recourse to injunctive relief was available "employers [would] be wary of assuming obligations to arbitrate specifically enforceable against them when no similarly efficacious remedy [was] available to enforce the concomitant undertaking of the union to refrain from striking."[65]

In reaching its conclusion, the Court further asserted that its holding was "a narrow one" and would apply only in situations where the collective bargaining agreement contained "a mandatory grievance adjustment or arbitration procedure."[66] The availability of injunctive relief to enforce compliance with an arbitration agreement the union voluntarily entered into would not "retard" the "central purpose of the Norris-LaGuardia Act to foster the growth and viability of labor organizations."[67] Such a remedial device merely enforced compliance with an obligation the union freely undertook.[68]

---

58. *Boys Markets*, 398 U.S. at 249 n.18.
59. *Id.* at 250.
60. *Id.* at 251.
61. *Id.*
62. *Id.* at 251-52.
63. *Id.* at 248.
64. *Id.* at 252.
65. *Id.* at 252.
66. *Id.* at 253.
67. *Id.* at 252-53.
68. *Id.* at 252.

In subsequent cases, the Court has demonstrated that the *Boys Markets* exception is indeed narrow by issuing a no strike injunction only when there is a breach of an agreement to arbitrate, not merely the breach of a no strike provision in the absence of an agreement to arbitrate.[69] Thus, the Court has refused to enjoin sympathy strikes[70] and politically motivated refusals to work[71] in breach of no strike provisions of collective bargaining agreements in the absence of the breach of an express mandatory arbitration provision in the labor contract.

IV. INSTANT DECISION

This emphasis upon arbitration agreements when requested to enter injunctive relief, to the exclusion of other contract provisions, including other methods of dispute resolution, is apparent in *AT&T*. Under the bargaining agreement between AT&T and its communications union, subcontracting disputes were to be handled pursuant to non-binding grievance procedures which called for meetings between employer and union leaders of escalating seniority.[72] The agreement expressly forbade the company and the union or their representatives from attempting "by means other than the grievance . . . procedures to bring about the resolution of any issue . . . properly a subject for disposition through such procedures."[73] By undertaking hand billing and "informational" picketing, the Union was arguably attempting to resolve the dispute by means other than those specified in the agreement, thereby violating the contract.[74] Thus, in requesting an injunction prohibiting the Union from undertaking these extra-contractual activities, AT&T arguably was within its contract rights.[75]

The court, however, emphasized the narrowness of the *Boys Markets* exception.[76] Quoting language from the *Boys Markets* opinion that the Supreme Court was dealing "only with the situation in which a collective-bargaining contract contains a mandatory grievance adjustment or arbitration procedure,"[77] Chief Judge Merritt reasoned that it was unclear whether the phrase "mandatory grievance adjustment" referred to "the kind of grievance procedures agreed to by AT&T and the Union."[78] "[A]ny suggestion," he wrote, "that grievance procedures short of arbitration are also within the exception would be dicta, and beyond the intended scope of the 'narrow' [*Boys Markets*] opinion."[79] Implying

69. *See* Leonard, *supra* note 20, at 201 n.51-53 and accompanying text.
70. *Id.*; Buffalo Forge Co. v. United Steel Workers, 428 U.S. 397, 406-09 (1976).
71. *See* Leonard, *supra* note 20, at 201 n. 51-53 and accompanying text; Jacksonville Bulk Terminals v. International Longshoremen's Ass'n, 457 U.S. 702, 723-24 (1982).
72. *AT&T*, 985 F. 2d at 856-57.
73. *Id.* at 857.
74. *See supra* notes 7-10 and accompanying text.
75. *Id.*
76. *AT&T*, 985 F.2d at 858.
77. *Boys Markets*, 398 U.S. at 253.
78. *AT&T*, 985 F.2d at 858.
79. *Id.*

that the non-enjoinability of secondary activities occurring in violation of the collective bargaining agreement was in fact a bargained for aspect of the collective bargaining agreement, the court pointed out that the non-binding procedures such as those agreed to in the collective bargaining agreement "allow a party the discretion to turn the negotiations into a meaningless exercise by refusing to reach an agreement."[80] In addition, the court indicated its concern about "[t]he danger that AT&T could use the grievance process to delay meaningful union action." [81] Allowing such a tactic conflicts with the purpose of the Norris-LaGuardia Act to prevent courts from depriving unions of the means of pressing a claim.[82]

The court of appeals also discussed *Teamsters v. Yellow Transit Freight Lines*,[83] decided after *Sinclair* but before *Boys Markets*, in which the Supreme Court disallowed a no strike injunction that it held violated the Norris-LaGuardia Act.[84] The labor dispute in *Yellow Transit* was subject to negotiation procedures similar to those in the collective bargaining agreement at issue in the present case.[85] The court in *AT&T* pointed out that Justice Brennan, who's dissent in *Sinclair* later became the basis of the *Boys Markets* opinion, concurred in *Yellow Transit*.[86] The court further noted that the concurrence in *Yellow Transit* was consistent with *Boys Markets*, because it was "clear" to Justice Brennan that the collective bargaining agreement at issue did not bind either party to arbitration.[87] "Although Justice Brennan's concurrence in *Yellow Transit* is not binding precedent," wrote Judge Merritt, "under the circumstances it is very persuasive" [because Justice Brennan was the author of the *Boys Markets* decision].[88] According to this reasoning, "[i]f the grievance procedures at issue in *Yellow Transit* were not sufficiently similar to arbitration to justify an exception to the Norris-LaGuardia Act, neither are the grievance procedures at issue here." [89]

V. COMMENT

There is an apparent need for the Supreme Court to more completely harmonize the conflict between the Taft-Hartley Act's grant of jurisdiction to resolve collective bargaining disputes and the Norris-LaGuardia Act's anti-injunction provision that effectively denies them the authority to do so, outside the "narrow" arbitration exception created in the *Boys Markets* decision. Some attempt has been made to find the conflict illusory by examining the legislative

80. *Id.*
81. *Id.* at 859.
82. *Id.*
83. 370 U.S. 711 (1962).
84. *Id.*
85. *Id.* at 712 (Brennan, J., concurring).
86. *AT&T*, 985 F.2d at 859.
87. *Id. See Yellow Transit*, 370 U.S. at 711-12.
88. *AT&T*, 985 F.2d at 859.
89. *Id.*

history of the two acts.[90] Another approach has been to suggest statutory amendment of the Norris-LaGuardia Act to allow broader use of an injunction to enforce a no-strike type of provision within a collective bargaining agreement.[91] Perhaps the best solution is a legislative one. This section of the Note, however, will focus on the analytic inconsistency of the judicial refusal to expand on the reasoning operative in *Boys Markets* to enjoin union activities carried out in violation of a collective bargaining agreement during the pendency of a dispute resolution mechanism other than arbitration.

Even though Justice Brennan's concurrence in *Yellow Transit* indicates an approach hostile to injunctions of union activity in the absence of an agreement to arbitrate,[92] as the court of appeals acknowledges, the district court's decision granting the injunction rests on language actually used in the *Boys Markets* decision.[93]

In expounding the effect of the Court's holding in *Boys Markets*, Justice Brennan explained: "Our holding in the present case is a narrow one. . . [w]e deal only with the situation in which a collective-bargaining contract contains a *mandatory grievance adjustment* or arbitration procedure."[94] This language seems to contemplate the use of injunctions in situations such as the present case, where there is a "mandatory grievance adjustment" procedure coupled with a no-strike provision. In particular, the agreement called for mandatory non-binding negotiation between union and management officials of progressively escalating authority and contained a reciprocal promise to not resolve the dispute outside this procedure.[95]

Whatever the meaning to be attached to "mandatory grievance adjustment," the sanctioning of injunctive relief in this situation would be consistent with the "shift" in congressional policy noted by the Court in *Boys Markets* "from protection of the nascent labor movement to the encouragement of collective bargaining and to administrative techniques for the peaceful resolution of industrial disputes."[96] Given the Court's reliance on this policy shift in providing guidance for its self-acknowledged task of accommodating and reconciling older statutes with more recent ones, for example Norris-LaGuardia and Taft-Hartley,[97] there has been no adequate explanation as to why it should not apply with equal efficacy to mandatory procedures other than arbitration.

Both the *Sinclair* and *Boys Markets* decisions acknowledged the historical context in which the Norris-LaGuardia Act was adopted and that it was primarily

---

90. *See* Leonard, *supra* note 20 at 205-06.

91. *See* Michael A. Berenson, *Labor Injunctions Pending Arbitration: A Proposal to Amend Norris-LaGuardia*, 63 TUL. L. REV. 1681, 1698-1700 (1989).

92. *See supra* notes 83-89 and accompanying text.

93. *AT&T*, 985 F.2d at 858.

94. *Boys Markets*, 398 U.S. at 253 (emphasis added).

95. *AT&T*, 985 F.2d at 856-57.

96. *Boys Markets*, 398 U.S. at 251.

97. *Id.*

intended to encourage and protect a week and youthful labor movement from judicial hostility.[98] While it is appropriate to deny federal courts the power to enjoin labor protest activities in violation of a "yellow dog" labor contract, where there was little pretense as to equality of bargaining power, it seems inappropriate to deny such relief when protests are conducted in violation of a collective bargaining agreement that was freely entered into and comprehensively negotiated by the union on terms of relative parity with management.

As is the case with any arbitration provision agreed to in a collective bargaining agreement, a mandatory non-binding negotiation procedure and a commitment to refrain from protest activities during its pendency, is bargained for by both parties. Unless such a procedure is understood from the beginning as a farce, in which case it is superfluous, it represents the parties' expectations about how disputes are to be resolved. If such procedures are to have any integrity, then federal courts should be allowed to effectuate them through the use of injunctive relief as allowed under *Boys Markets*. While it is true that an agreement to arbitrate, unlike an agreement to negotiate, will necessarily result in a final resolution of the dispute, it does not necessarily follow that the process is a "meaningless exercise," though the parties do have the discretion to turn it into one.[99] It seems questionable whether concern that management will abuse the non-binding grievance procedures to delay meaningful union action justifies strict adherence to the broad language of the Norris-LaGuardia Act.[100] It is just this sort of opportunistic behavior, on the part of management or a union, that alternative dispute resolution mechanisms are designed to overcome. They allow the parties to anticipate disputes, create an appropriate process for resolving them, and then attempt to arrive at a mutually satisfactory solution.

VI. CONCLUSION

It is analytically consistent with *Boys Markets* to allow the federal courts jurisdiction to enjoin union protest activities carried out in violation of a collective bargaining agreement, even in the absence of an agreement to arbitrate. If the parties to a collective bargaining agreement are to be free to order the nature of their relationship in agreements that have integrity, it does not make sense to treat violation of non-binding mandatory grievance adjustment procedures differently from violations where the agreement happens to contain an arbitration clause. A regime that denies the federal courts jurisdiction to effectuate such agreements promotes continued adherence to an industrial policy forged in a different historical context to remedy a different set of problems than those presented.

MARK RILEY KROEKER

98. *See supra* notes 59-62 and accompanying text.
99. *See supra* notes 79-80 and accompanying text.
100. *See supra* notes 81-82 and accompanying text.