

Washington Law Review

Volume 57 | Number 1

12-1-1981

Labor Unions—Vicarious Liability for Torts Committed by Members—*Buchanan v. International Brotherhood of Teamsters*, 94 Wn. 2d 508, 617 P.2d 1004 (1980)

Paul M. Feinsod

Follow this and additional works at: <https://digitalcommons.law.uw.edu/wlr>



Part of the [Labor and Employment Law Commons](#)

Recommended Citation

Paul M. Feinsod, Recent Developments, *Labor Unions—Vicarious Liability for Torts Committed by Members—Buchanan v. International Brotherhood of Teamsters*, 94 Wn. 2d 508, 617 P.2d 1004 (1980), 57 Wash. L. Rev. 193 (1981).

Available at: <https://digitalcommons.law.uw.edu/wlr/vol57/iss1/8>

This Recent Developments is brought to you for free and open access by the Law Reviews and Journals at UW Law Digital Commons. It has been accepted for inclusion in Washington Law Review by an authorized editor of UW Law Digital Commons. For more information, please contact cnyberg@uw.edu.

LABOR UNIONS—VICARIOUS LIABILITY FOR TORTS COMMITTED BY MEMBERS—*Buchanan v. International Brotherhood of Teamsters*, 94 Wn. 2d 508, 617 P.2d 1004 (1980).

I. INTRODUCTION

The Washington Supreme Court reconsidered the standard for assessing the civil liability of a labor union, its officers, and its members for torts committed by individual union members in *Buchanan v. International Brotherhood of Teamsters*.¹ Buchanan, a nonunion truck driver, alleged that he was severely beaten by members of the defendant unions for driving his delivery truck across their picket lines during a strike. Buchanan specifically named five union members, their local and international unions, and the international union trustee² as defendants.

The trial court dismissed the unions' motion for summary judgment. The Washington Supreme Court granted review to address the issue of the proper standard of proof for judging union liability in tort actions. Five justices³ agreed that RCW § 49.32.070,⁴ which limits officer, member, and organizational liability, did not apply in such cases. In so holding, the court reaffirmed its seventeen-year-old decision in *Titus v. Tacoma Smelters' Union*⁵ that general rules of agency law alone determine whether a union, its officers, or its members may be held responsible for the wrongful acts of individual members.⁶

1. 94 Wn. 2d 508, 617 P.2d 1004 (1980).

2. At the time of this incident, Independent Local 313 was in trusteeship of the International Union. *Id.* at 508, 617 P.2d at 1004.

3. Justice Brachtenbach wrote the court's opinion.

4. Section 6 of the Labor Disputes Act (1933) states:

No officer or member of any association or organization and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the state of Washington for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof.

Ch. 7, § 6, 1933 Wash. Laws (Ex. Sess.) 10 (1933) (codified at WASH. REV. CODE § 49.32.070 (1979)).

5. 62 Wn. 2d 461, 383 P.2d 504 (1963).

6. Both the *Titus* and *Buchanan* decisions analyze union liability for individual members' acts under the common-law principles applicable to a master-servant relationship. In *Titus*, for example, the court followed the rule "that a master may be held liable for the tortious acts of his servant, although he may not know or approve of them, if such acts are done within the scope of employment." *Id.* at 469, 383 P.2d at 509-10 (citing RESTATEMENT (SECOND) OF AGENCY § 219 (1958)). Thus, under the rationale of respondeat superior, masters do not incur liability due to their own misconduct; rather, it is the fact that the masters' servants have committed wrongful acts while in their service which holds the masters responsible. W. SEAVEY, HANDBOOK OF THE LAW OF AGENCY, 141 (1973). In the labor relations setting, the union is considered as the master and the errant union

In following *Titus*, the court remained unpersuaded by the United States Supreme Court's decision in *United Mine Workers v. Gibbs*.⁷ In *Gibbs*, decided three years after *Titus*, the High Court determined that section 6 of the Norris-LaGuardia Act⁸—progenitor of RCW § 49.32.-070⁹—was the proper standard of proof for a claim brought against a union under state tort law.¹⁰

The effect of the *Buchanan* holding is to leave Washington with a different standard for proving a union's vicarious tort liability than exists under federal law. When the responsibility of a union, its officers, and its members¹¹ is adjudged in accordance with Washington law, common-law rules on agency are applied; when the identical liability is at issue under federal law, section 6 of the Norris-LaGuardia Act applies.

This note first considers major developments in the law which preceded *Buchanan*. The reasoning of the Washington Supreme Court in this case then will be explicated, together with an analysis of the disparate views of the members of the court. This analysis will show that the majority position has unnecessarily excluded tort actions from the purview of RCW § 49.32.070. The note will conclude with a proposal for an alternative approach for the Washington courts to follow in future union-related tort cases.

II. BACKGROUND

The basic notion that a union may be held liable for torts committed by

members fill the servant role. Unfortunately, the Washington court has not addressed the issue whether the common-law master-servant paradigm is still the most appropriate one by which to analyze the modern union-member relationship. See also 39 WASH. L. REV. 217 (1964).

7. 383 U.S. 715 (1966).

8. No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof.

Ch. 90, § 6, 47 Stat. 70 (1932) (codified at 29 U.S.C. § 106 (1976)).

9. RCW § 49.32.070 is part of Washington's so-called "little Norris-LaGuardia Act." It was passed by the Washington legislature one year after the United States Congress enacted the Norris-LaGuardia Act, Labor Disputes Act, ch. 7, 1933 Wash. Laws (Ex. Sess.) 10 (1933). The Washington law mirrors its federal counterpart. See note 4 *supra*.

10. Justice Horowitz, dissenting in *Buchanan*, found the "majority's reliance on *Titus*" to be "clearly misplaced after *Gibbs*," and would have had Washington follow the federal rule. 94 Wn. 2d at 515, 617 P.2d at 1007. Chief Justice Utter and Justice Dolliver joined in Justice Horowitz's opinion.

11. This note is concerned exclusively with the question of union liability in cases in which someone has acted on behalf of a union. The issue of personal liability of a union member who has acted only in an individual capacity will not be discussed.

its members and officers, is well-established.¹² Various courts have decided, for example, that labor organizations were responsible for negligently maintaining property,¹³ wrongfully depriving members of the right to work,¹⁴ interfering with an employer's operation,¹⁵ interfering with a contract,¹⁶ and willfully destroying the property of a nonstriking employee.¹⁷

Notwithstanding the existence of such liability, the question of its extent has been a difficult one to resolve. Historically, courts and legislatures throughout the United States have not been consistent in their tolerance of union-related activities.¹⁸ Early in the nineteenth century, the doctrine of criminal conspiracy was invoked to chill organized efforts aimed at improving working conditions.¹⁹ By 1842 this doctrine had fallen into disfavor, as courts recognized that not all combinations of workers were malevolent.²⁰ But later in the nineteenth century, union activity again was discouraged, as courts used the doctrine of civil conspiracy to enjoin strikes and picketing.²¹ Their underlying theory was that

12. The United States Supreme Court specifically has recognized that tort actions may be brought against unions in state courts and are not preempted by the National Labor Relations Act. *Farmer v. Carpenters Local 25*, 430 U.S. 290 (1977). See generally W. PROSSER, *THE LAW OF TORTS* § 130, at 962–69 (4th ed. 1971); Annot., 36 A.L.R.3d 405 (1975).

13. *Marshall v. ILWU Local 6*, 57 Cal. 2d 781, 371 P.2d 987, 22 Cal. Rptr. 211 (1962) (en banc) (parking lot next to union hall improperly obstructed).

14. *United Ass'n of Journeymen v. Borden*, 160 Tex. 203, 328 S.W.2d 739 (1959).

15. *United Mine Workers of America v. Patton*, 211 F.2d 742 (4th Cir.), cert. denied, 348 U.S. 824 (1954) (union held responsible for field representative's actions).

16. *Love & Amos Coal Co. v. United Mine Workers*, 53 Tenn. App. 37, 378 S.W.2d 430 (1963), cert. denied, 376 U.S. 971 (1964).

17. *International Brotherhood of Boilermakers v. Newman*, 116 Ga. App. 590, 158 S.E.2d 298 (1967).

18. For detailed historical developments of this area see N. CHAMBERLAIN & D. CULLEN, *THE LABOR SECTOR* 91–156 (2d ed. 1971); A. COX, D. BOK & R. GORMAN, *CASES AND MATERIALS ON LABOR LAW* 7–102 (8th ed. 1979); R. SMITH, L. MERRIFIELD & T. ST. ANTOINE, *LABOR RELATIONS LAW* 2–68 (6th ed. 1979).

19. *Commonwealth v. Pullis* (The Philadelphia Cordwainers' Case) (Philadelphia Mayor's Court 1806), reprinted in 3 J. COMMONS & E. GILMORE, *DOCUMENTARY HISTORY OF AMERICAN INDUSTRIAL SOCIETY* 59 (1910); R. SMITH, L. MERRIFIELD & T. ST. ANTOINE, *supra* note 18, at 3–6.

20. See, e.g., *Commonwealth v. Hunt*, 45 Mass. (4 Met.) 111, 38 Am. Dec. 346 (1842). See also N. CHAMBERLAIN & D. CULLEN, *supra* note 18, at 126.

21. R. SMITH, L. MERRIFIELD & T. ST. ANTOINE, *supra* note 18, at 11–12. In one typical case, the issue was whether a picket in front of plaintiff's factory should be enjoined. The court wrote:

An employer has a right to engage all persons who are willing to work for him, at such prices as may be mutually agreed upon, and persons employed or seeking employment have a corresponding right to enter into or remain in the employment of any person or corporation willing to employ them. These rights are secured by the constitution itself. . . . No one can lawfully interfere by force or intimidation to prevent employers or persons employed or wishing to be employed from the exercise of these rights. . . . Intimidation is not limited to threats of violence or of physical injury to person or property. It has a broader signification, and there also may be a moral intimidation which is illegal. . . . The patrol was unlawful interference both

unions through these activities perpetrated actionable harms upon employers and society.²² Federal statutory schemes also affected judicial decisions on union organizational efforts. For instance, courts severely curtailed boycotts and strikes under the Sherman Antitrust Act²³ by construing such activities as illegal attempts to obtain a labor market monopoly.²⁴

In response to these developments, Congress and many state legislatures perceived a need to remove labor unions from the constraints imposed by judicial interpretations of the common law and antitrust laws. The first congressional attempt to accomplish this goal, the Clayton Act²⁵ (1914), proved ineffective, although it did signal the beginning of a more lenient governmental attitude toward unions.²⁶ Then in 1932, after many unsuccessful attempts at further reforming the country's labor laws,²⁷

with the plaintiff and with the workmen, within the principle of many cases; and, when instituted for the purpose of interfering with his business, it became a private nuisance. *Vegeahn v. Guntner*, 167 Mass. 92, 44 N.E. 1077, 1077 (1896)(citations omitted). It should be noted that Justice Holmes's dissent in this case proved to be a harbinger of 20th-century views toward labor organization:

But there is a notion, which latterly has been insisted on a good deal, that a combination of persons to do what any of them lawfully might do by himself will make the otherwise lawful conduct unlawful. It would be rash to say that some as yet unformulated truth may not be hidden under this proposition. But, in the general form in which it has been presented and accepted by many courts, I think it plainly untrue, both on authority and principle. . . . It is plain from the slightest consideration of practical affairs, or the most superficial reading of industrial history, that free competition means combination, and that the organization of the world, now going on so fast, means an ever-increasing might and scope of combination. It seems to me futile to set our faces against this tendency. Whether beneficial on the whole, as I think it, or detrimental, it is inevitable, unless the fundamental axioms of society, and even the fundamental conditions of life, are to be changed.

Id., 44 N.E. at 1081.

22. N. CHAMBERLAIN & D. CULLEN, *supra* note 18, at 127-28.

23. Ch. 647, 26 Stat. 209 (1890) (current version at 15 U.S.C. §§ 1-7 (1976)). Although controversy surrounded the initial intent of the Sherman Act, there is little doubt as to its anti-union effect. The *Danbury Hatter's Case* (*Loewe v. Lawlor*, 208 U.S. 274 (1908), and *Lawlor v. Loewe*, 235 U.S. 522 (1915)) is illustrative. There, an organization of hatters was held liable under the Sherman Act for instituting a boycott against a manufacturer. In the subsequent case of *Coronado Coal Co. v. United Mine Workers* (*Coronado II*), 268 U.S. 295 (1925), the Supreme Court reversed a directed verdict in favor of the union and held that it could be liable under the Sherman Act for strikes and picketing directed against a coal company. *See* N. CHAMBERLAIN & D. CULLEN, *supra* note 18, at 128-29.

24. W. PROSSER, *supra* note 12, §130, at 964.

25. Ch. 323, 38 Stat. 730 (1914) (current version at 15 U.S.C. §§ 12-27 (1976)).

26. The country's labor laws were further liberalized in 1926 under the Railway Labor Act, ch. 347, 44 Stat. 577 (1926) (current version at 45 U.S.C. §§ 151-188 (1976)).

27. *See Commentary* to STATUTORY HISTORY OF THE UNITED STATES: LABOR ORGANIZATION, at 162 (R. Koretz ed. 1970) [hereinafter cited as LABOR ORGANIZATION].

Congress passed the Norris-LaGuardia Act.²⁸ A number of states followed suit with statutory regulation of labor injunctions and “yellow-dog” contracts.²⁹ Washington, in 1933, joined those states by adopting a “little” Norris-LaGuardia Act.³⁰ Both the Norris-LaGuardia Act and the Washington Labor Disputes Act recognized that “the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment”³¹ These Acts, therefore, sought to insure that each employee

have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection³²

Toward the optimal achievement of these goals, a special provision was included in the Norris-LaGuardia and Washington Acts to alleviate some of the pressure facing unions and their leaders involved or interested in a labor dispute. Section 6 of the federal and Washington statutes require that organizational, officer, and member liability for “unlawful acts of individual officers, members, or agents” rest “upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof.”³³ Applying this standard, in light of the enunciated purpose of the original and “little” Norris-LaGuardia Acts, has been an ongoing task for the courts.

The first major consideration of section 6 of the Norris-LaGuardia Act

28. Ch. 90, 47 Stat. 70 (1932) (current version at 29 U.S.C. §§ 101–115 (1976)). *See generally* LABOR ORGANIZATION, *supra* note 27, at 162–257 (outstanding development of the passage of the Norris-LaGuardia Act).

29. Aaron, *Labor Injunctions in the State Courts—Part I: A Survey*, 50 VA. L. REV. 951, 953–56 (1964).

30. Labor Disputes Act, ch. 7, 1933 Wash. Laws (Ex. Sess.) 10 (1933) (codified at WASH. REV. CODE ch. 49.32 (1979)). Fourteen years earlier, the legislature had sanctioned the existence of labor unions. In so doing, it created the basis for future labor relations in Washington:

LEGALIZING LABOR UNIONS

AN ACT declaring labor unions to be lawful organizations; relating to the powers of the courts of this state in the granting of injunctions; declaring the labor of a human being not a commodity or article of commerce; prohibiting the indictment, prosecution or trial of any person or combination of persons for any lawful act in furtherance of bettering of his or their conditions.

Act of March 12, 1919, ch. 185, 1919 Wash. Laws (Ex. Sess.) 568 (1919) (codified at WASH. REV. CODE ch. 49.36 (1979)).

31. 29 U.S.C. § 102 (1976); WASH. REV. CODE § 49.32.020 (1979).

32. *Id.*

33. 29 U.S.C. § 106 (1976); WASH. REV. CODE § 49.32.070 (1979). *See* notes 4 and 8 *supra* for complete text.

occurred in the landmark case of *United Brotherhood of Carpenters v. United States*.³⁴ There, defendant unions were charged under the Sherman Antitrust Act with criminally conspiring to fix wages. At issue was whether section 6 of the Norris-LaGuardia Act shielded the unions and their members from responsibility for wrongful acts committed by union leaders in "individual" capacities, when these unions and members had never officially participated in, expressly authorized, or ratified the acts. The Court held that there was no union or membership liability "without clear proof that the organization or member charged with responsibility for the offense actually participated, gave prior authorization, or ratified such acts after actual knowledge of their perpetration."³⁵

The state courts did not unanimously adopt the Supreme Court's *United Brotherhood* holding when considering their own "little" Norris-LaGuardia acts. While the Supreme Court of Connecticut deferred to the *United Brotherhood* construction of section 6 when applying a similar state provision,³⁶ the Indiana Supreme Court declined to do likewise. In *Nelson v. Haley*,³⁷ the Indiana court narrowly interpreted the title of its

34. 330 U.S. 395 (1947).

35. *Id.* at 403. See LABOR ORGANIZATION, *supra* note 27, at 185-87, 200, 205, 235. See also 3 H. TOULMIN, A TREATISE ON THE ANTI-TRUST LAWS OF THE UNITED STATES §§ 23.2, 23.3, 23.16 (1949 & Supp. 1980). In reviewing the legislative history of § 6, Justice Reed, writing for the majority in *United Brotherhood*, took notice of the congressional debate over the effect of this standard. He concluded that there was no need to label it as either a rule of evidence or a substantive change in the law of agency. 330 U.S. at 403.

Justice Frankfurter, in dissent, strongly objected to the construction given to § 6 by the majority: "The construction given by the court to § 6 is based on considerations which move in a world of unreality." *Id.* at 414. Frankfurter claimed that the Court's interpretation allowed unions to escape their responsibilities too easily, *id.* at 415, and practically speaking, it provided unions with immunity for acts performed by their agents. *Id.* at 417, 421. In sum, Frankfurter maintained that Congress simply intended § 6 to limit the overextension of the doctrine of conspiracy, via the use of agency principles:

The Congressional purpose behind § 6, then, is clear. All that Congress sought to do was to eliminate an extraneous doctrine that had crept into some of the decisions whereby organizations were held responsible not for acts of agents who had authority to act, but for every act committed by any member of the union merely because he was a member, or because he had some relation to the union although not authorized by virtue of his position to act for the union in what he did. And so Congress charged the federal courts with the duty to look sharply to the relation of the individual to the affairs of the organization, and not to confound individual with union unless the individual is clothed with power by the union, in the ordinary way of union operation, in doing what he does for the union.

Id. at 418-20 (footnotes omitted). It is instructive that the Senate Committee on the Judiciary had looked to the earlier work by Frankfurter and Greene, *The Labor Injunction* (1930), in its consideration of injunction abuses. S. REP. NO. 163, 72d Cong., 1st Sess., Part I (1932).

36. *Benoit v. Amalgamated Local 299 United Electrical Radio and Machine Workers of America*, 150 Conn. 266, 188 A.2d 499, 502-03 (1963) (union members prevented nonunion employees from entering a plant).

37. 232 Ind. 314, 111 N.E.2d 812 (1953).

state act and thereby refused to limit a union's liability in a civil action for assault and battery by a union organizer.³⁸

Washington was among the states that refused to follow *United Brotherhood*. In *Titus v. Tacoma Smeltermen's Union*³⁹ the Washington Supreme Court unanimously determined that *United Brotherhood* was not controlling in a civil action for unlawful interference with an employment contract.⁴⁰ The court held that RCW § 49.32.070 (Washington's counterpart to section 6 of the Norris-LaGuardia Act) applied only to cases involving restraining orders and injunctions; it did not extend to the area of tort liability.⁴¹ The court based its ruling on the fact that this statute is part of the state Labor Disputes Act, which professes to deal only with enjoining conduct involved in a labor dispute.⁴² *United Brotherhood* was distinguished as being limited solely to whether section 6 of the Norris-LaGuardia Act applies to criminal liability under the Sherman Act.⁴³

Any doubt whether the United States Supreme Court considered *United Brotherhood* controlling in tort cases involving unions should have been erased in *United Mine Workers v. Gibbs*.⁴⁴ The plaintiff in *Gibbs* sued the

38. The title of the 1933 Indiana Act varies somewhat from that of RCW § 49.32.011, but the Indiana Act limits the powers of its state courts in a similar manner:

An act defining and limiting the jurisdiction of the courts of this state in the issuance of restraining orders and injunctions in cases involving or growing out of labor disputes and declaring the public policy of the state in relation thereto, providing that certain promises, agreements and contracts shall afford no basis for the granting of legal or equitable relief by the courts of this state. . . .

Injunctions [in Labor Disputes] Act, ch. 12, 1933 Ind. Acts (1933), *quoted in* Nelson v. Haley, 232 Ind. 314, 111 N.E.2d 812, 814 (1953). The Supreme Court of Indiana never reached the *United Brotherhood* decision. Rather, it held that the provision (§ 6) of the Act limiting union liability for members' actions was void as being outside of the scope of the Act's title. The court was then left to strictly determine the defendant union's liability under standard agency analysis. 111 N.E.2d at 815.

39. 62 Wn. 2d 461, 383 P.2d 504 (1963).

40. *Id.* at 468, 383 P.2d at 509. Specifically, nonunion employees sought recovery of damages from the union after two of its members denied the plaintiffs entry to the workplace and assaulted them. *See generally* 39 WASH. L. REV. 217 (1964).

41. 62 Wn. 2d at 468, 383 P.2d at 509.

42. As the court noted:

[T]he title of the act, from which RCW Chapter 49.32 was codified, reads as follows:

"An Act relating to labor, and labor disputes, defining and limiting the powers of the courts of this state in the *granting of restraining orders and injunctions* in cases involving or growing out of any labor dispute, and in the *trial and punishment for contempt for violation thereof*, declaring the public policy of the State of Washington with respect thereto and with respect to contracts of employment and hiring, and repealing all acts and parts of acts in conflict therewith." (Italics ours.)

Id. at 468, 383 P.2d at 509 (quoting Labor Disputes Act, ch. 7, Title sentence, 1933 Wash. Laws (Ex. Sess.) 10 (1933) (Title sentence not codified in WASH. REV. CODE)).

43. *Id.* at 468-69, 383 P.2d at 509.

44. 383 U.S. 715 (1966). *Gibbs* most often has been discussed for its procedural significance in establishing the power of federal courts to retain jurisdiction over state-law claims under the doctrine of pendent jurisdiction. *See, e.g., The Supreme Court, 1965 Term*, 80 HARV. L. REV. 91, 220-24

United Mine Workers union for interference with his contracts of employment and haulage. The defendant union successfully argued that section 6 of the Norris-LaGuardia Act limited its liability. In writing for the Court, Justice Brennan was convinced that, in the wake of the 1947 Labor Management Relations Act (LMRA), Congress intended section 6 of the Norris-LaGuardia Act to continue to apply to those claims not covered by the LMRA.⁴⁵

Federal courts consistently have relied upon *Gibbs* to determine union liability for wrongful individual acts.⁴⁶ Any questions related to the application of section 6 of the Norris-LaGuardia Act to tort law have centered around the interpretation, not the appropriateness, of the federal legislation.⁴⁷ As evidenced by *Buchanan v. International Brotherhood of Team-*

(1966). Substantively, however, this case involved claims brought in federal court under § 303 of the Labor Management Relations Act, 29 U.S.C. § 187 (1976), and under the Tennessee common law of torts.

45. 383 U.S. at 736. Following World War II, there was growing dissatisfaction with the original dictates of the National Labor Relations Act (NLRA), ch. 372, 49 Stat. 449 (1935) (current version at 29 U.S.C. §§ 151–167 (1976)) (also known as the Wagner Act), as strikes proliferated and union power increased. In 1947, Congress enacted the Labor Management Relations Act (LMRA), ch. 120, 61 Stat. 136 (1947) (current version at 29 U.S.C. §§ 141–187 (1976)) (also known as the Taft-Hartley Act) in order to further control the manner in which labor relations would occur, and thus encourage greater industrial peace. New provisions were added to the NLRA which allowed suits to be brought in federal court to enforce collective bargaining agreements. Also, actions for damages could be filed in both state and federal courts for various unfair labor practices. *See generally* B. MELTZER, LABOR LAW 32–34 (2d ed. 1977).

It remained for the courts to decide how the LMRA should be applied in those instances where sections of it conflicted with portions of the Norris-LaGuardia Act. In *Gibbs*, the question was raised whether § 301 of the LMRA, which provides that unions be held liable under agency standards, superceded § 6 of the Norris-LaGuardia Act. Justice Brennan's conclusion was that Congress, well aware of the *United Brotherhood* decision, intended that § 6 remain the applicable test in those situations not specifically within LMRA coverage. Justice Brennan wrote: "The driving force behind § 6 . . . was the fear that unions might be destroyed if they could be held liable for damage done by acts beyond their practical control. Plainly, § 6 applies to federal court adjudications of state tort claims arising out of labor disputes . . ." 383 U.S. at 736–37 (footnotes omitted). *See also* Complete Auto Transit, Inc. v. Reis, 101 S. Ct. 1836 (1981). Furthermore, Justice Brennan attempted to clarify the "clear proof" standard of § 6. He maintained that while the plaintiff need not satisfy the criminal burden of "beyond a reasonable doubt," the plaintiff must do more than meet the ordinary civil burden of persuasion. According to Justice Brennan, a plaintiff "must come forward with more than a bare preponderance of the evidence to prevail." 383 U.S. at 737.

In a separate concurring opinion, Justices Harlan and Clark took exception to the Court's construction of § 6 of the Norris-LaGuardia Act. Justice Harlan wrote that "[t]he Court construes this provision as fixing a new test of the quantum of proof, somewhere between ordinary civil and criminal standards." *Id.* at 743. He thought that such a reading of § 6 would, accordingly, create ambiguity as to the proper standard in criminal cases. *Id.*

46. *E.g.*, *Kayser-Roth Corp. v. Textile Workers Union*, 479 F.2d 524, 528 (6th Cir. 1973), *cert. denied*, 414 U.S. 976 (1973); *Riverside Coal Co. v. United Mine Workers*, 410 F.2d 267, 271–72 (6th Cir. 1969).

47. For example, in *Smith v. American Guild of Variety Artists*, 368 F.2d 511 (8th Cir. 1966).

sters, however, not all states with “little” Norris-LaGuardia Acts have been compelled to follow the Supreme Court’s lead in *Gibbs* in tort cases.⁴⁸

III. THE *BUCHANAN* COURT’S REASONING

In *Buchanan*, the court was squarely presented with the question whether it should continue to follow its construction of RCW § 49.32.070 given in *Titus v. Tacoma Smeltermen’s Union*, in view of the variant application of the identical federal statute by the United States Supreme Court in *Gibbs*. Justice Brachtenbach, writing for the court, answered this question affirmatively, holding that general rules of agency law should remain the sole determinants of a union’s vicarious tort liability.⁴⁹ He gave two reasons for this decision. First, Justice Brachtenbach agreed that, in light of the title description of the Labor Disputes Act, the court was correct in *Titus* to limit the applicability of RCW § 49.32.070 to cases involving restraining orders, injunctions, and contempt matters.⁵⁰ Justice Brachtenbach raised, but never directly addressed, petitioners’ contention that the *Titus* court originally was wrong in examining the title of RCW § 49.32 to interpret the legislature’s intent.⁵¹ Second, Justice

the court referred to *Gibbs* and could only conclude that “[s]ection six is either a rule of evidence or one changing the substantive law of agency.” *Id.* at 514.

The Supreme Court has attempted to provide further guidance as to the meaning of § 6. In *Ramsey v. United Mine Workers*, 401 U.S. 302 (1971), Justice White explained that:

On its face § 6 is not addressed to the quantum of evidence required to prove the occurrence of the alleged “unlawful acts.” It is concerned only with requiring “clear proof” that the person or organization charged actually participated in, authorized, or ratified “such acts.” Nothing in the words of the section suggests that a new and different standard of proof was being prescribed for all issues in actions against a union, its members or its officers involved in a labor dispute. The section neither expressly nor by implication requires satisfaction of the clear-proof standard in deciding factual issues concerning the commission vel non of acts by union officers or by members alleged to constitute a conspiracy

Id. at 309. Justice Douglas, joined by Justices Black, Harlan and Marshall, sharply disagreed. In Justice Douglas’s opinion, § 6 requires “clear proof” that a union had authorized, participated in, or ratified the “unlawful acts” in question. According to Justice Douglas, § 6 liability for a union meant that it “had full complicity in the scheme.” *Id.* at 315 (Douglas, J., dissenting).

48. Interestingly, in 1972 the Connecticut Supreme Court had an opportunity to reevaluate its state counterpart to § 6 in light of *Gibbs*. Contrary to the Washington Supreme Court, it found the United States Supreme Court’s application to be persuasive. *United Aircraft Corp. v. International Ass’n of Machinists*, 161 Conn. 79, 285 A.2d 330, 336–37 (1971), *cert. denied*, 404 U.S. 1016 (1972).

49. 94 Wn. 2d at 509–10, 617 P.2d at 1004–05.

50. *Id.*

51. *Id.* Petitioners apparently argued that the language of the union-liability statute was not ambiguous and, accordingly, the Washington Supreme Court never should have resorted to the Act’s title for further meaning. *See generally* *Ayers v. City of Tacoma*, 6 Wn. 2d 545, 556–57, 108 P.2d 348, 353 (1940) (where act is ambiguous, legislative history, including the act’s title, may be resorted to in determining legislative intent).

Brachtenbach cited the seventeen-year legislative silence following *Titus* as being determinative. He presumed that the state legislature knew of that decision, and chose to agree with the result reached therein.⁵²

Justice Rosellini's concurring opinion rested upon brief reexaminations of two United States Supreme Court decisions. From *United Brotherhood*, he reasoned that section 6 of the Norris-LaGuardia Act was "enacted to forestall judicial discouragement of legitimate union activity through application of rules of conspiracy liability."⁵³ According to Justice Rosellini, then, the Washington court in *Titus* was entirely justified in concluding that the federal provision was meant to be limited to criminal prosecutions, as opposed to civil damage suits. He also distinguished the complaint in *Gibbs* (an economic harm) from that in *Buchanan* (a physical harm). Thus, Justice Rosellini argued, in neither *United Brotherhood* nor in *Gibbs* "was the [United States Supreme] court called upon to decide whether the section [6] was meant to restrict recovery in cases of physical assault."⁵⁴ He also agreed with Justice Brachtenbach's reading of the state legislature's post-*Titus* silence, interpreting it as an acquiescence with the court's earlier decision.⁵⁵

Justice Horowitz, in dissent, felt that the court's reliance on *Titus* was clearly misplaced after *Gibbs*. He maintained that the United States Supreme Court had properly extended *United Brotherhood* into tort law and that the Washington court should have appreciated the precedential value of that interpretation, instead of reexamining it.⁵⁶ Claiming that the *Titus* court improperly read *United Brotherhood* as limiting section 6 of the Norris-LaGuardia Act to criminal actions only, Justice Horowitz furthermore found that the court in *Titus* erred in its reliance on the title of the Washington Labor Disputes Act as a limitation on the scope of RCW § 49.32.070.⁵⁷ Finally, he disputed the majority's interpretation of the meaning of the state legislature's inactivity following *Titus*.⁵⁸

52. 94 Wn. 2d at 511, 617 P.2d at 1005-06.

53. *Id.* at 513, 617 P.2d at 1006.

54. *Id.*, 617 P.2d at 1007.

55. *Id.*

56. *Id.* at 516, 617 P.2d at 1008.

57. *Id.* at 517, 617 P.2d at 1008-09.

58. There is no evidence in this case that this court's interpretation of RCW 49.32.070 in *Titus* was ever expressly considered by the legislature. Rather than presuming acquiescence in an erroneous interpretation because of the legislature's silence, it would be as logical to conclude that no action was taken because the legislators presumed that the Supreme Court's decision 3 years later in *Gibbs* insured that RCW 49.32.070 would be properly interpreted to preclude tort suits of the type brought in this case without clear proof of participation, authorization or ratification.

Id.

IV. AN ANALYSIS OF THE *BUCHANAN* COURT'S REASONING

A. *The Standard of Proof*

The *Buchanan* decision highlights the contrast between the federal and Washington approaches to a union's vicarious tort liability. The United States Supreme Court had determined that a union, its officers, and its members should be held responsible for individual wrongful acts only when there is "clear, unequivocal, and convincing proof" that they actually participate in, authorize, or ratify such conduct. The Washington Supreme Court refused to adopt this strict standard. Instead, it chose to continue judging vicarious responsibility for torts under common-law rules of agency. Thus, in Washington, the salient test for union liability remains whether union members, although acting individually, are within the scope of their "employment" relationship with the union and in furtherance of the union's "business" when they commit torts.

The primary distinction between these standards is the extent to which union involvement with a wrongful act must be demonstrated in order to attribute liability to it. Following *Buchanan*, it remains quite possible for a union in the state of Washington to be held responsible for unknown and unapproved behavior of members who intend to act on their union's behalf. Contrarily, the more difficult burden of proof found in the federal test makes it less likely that a union will incur liability when its members, attempting to help their union, independently commit acts of violence.⁵⁹

B. *Tort Actions Under RCW § 49.32.070*

Justice Brachtenbach was persuaded by the *Titus* court's finding that the state legislature intended RCW § 49.32.070 to apply only "to restraining orders, injunctions, and contempt matters arising out of labor disputes,"⁶⁰ and not to tort liability. This interpretation exclusively considers the *means* employed by the original 1933 Labor Disputes Act and improperly overlooks the full *purpose* of the legislation.

59. As noted earlier, Justice Frankfurter in his *United Brotherhood* dissent recognized the full potential for union protection under § 6 of the Norris-LaGuardia Act. *See* note 35 *supra*. In that case, the Supreme Court was considering the relationship between the Norris-LaGuardia Act and the Sherman Act, and Justice Frankfurter wrote:

To come under the Court's indulgent rule of immunity from liability for the acts of its officers, unions will not rest on a lack of affirmative authorization. To make assurance doubly sure they will, doubtless in good conscience, have standing orders disavowing authority on the part of their officers to make any agreements which may be found to be in violation of the Sherman Law.

330 U.S. at 421.

60. 94 Wn. 2d at 511, 617 P.2d at 1005.

Restraining orders and injunctions undermined organizational activity early in this century, and it is undisputed that the Norris-LaGuardia and Labor Disputes Acts were aimed at curtailing their use. Nevertheless, it also must be concluded that these statutes were enacted more generally as vehicles to facilitate the open operation of the labor marketplace. As reflected by the second sections of the Norris-LaGuardia and Labor Disputes Acts,⁶¹ the legislative policy underlying them was to guarantee certain freedoms for employees. These included the right to associate with coworkers, to self-organize, to designate representatives, and to negotiate terms and conditions of employment. They also included the right to be free from the interference, restraint or coercion of employers in such designation, organization, or other concerted activities of collective bargaining and mutual protection.⁶²

A primary object of the Norris-LaGuardia and Labor Disputes Acts, therefore, was that the courts not be used in a manner which would obstruct these goals.⁶³ The Senate Judiciary Committee, in considering passage of section 6 of the Norris-LaGuardia Act, expressed a distinct concern that legitimate labor activity remain unencumbered by threats of damage awards against law-abiding union leaders and members. It found, for example:

In case of a strike, where the officers of the labor union are doing everything within their power to prevent acts of violence from being committed by any person, the law should fully protect them and save them and the members of their organization who are following their advice from liability

61. 29 U.S.C. § 102 (1976); WASH. REV. CODE § 49.32.020 (1979).

62. See text accompanying notes 31 & 32 *supra*.

63. For example, section 4 of the Labor Disputes Act denies Washington state courts jurisdiction to issue restraining orders or injunctions in cases arising out of labor disputes, when such issuance would prohibit participants from:

- (1) Ceasing or refusing to perform any work or to remain in any relation of employment;
- (2) Becoming or remaining a member of any labor organization . . . ;
- (3) 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;
- (4) 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;
- (5) 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;
- (6) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;
- (7) Advising or notifying any person of an intention to do any of the acts heretofore specified;
- (8) Agreeing with other persons to do or not to do any of the acts heretofore specified; and
- (9) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified. . . .

WASH. REV. CODE § 49.32.050 (1979). See also Norris-LaGuardia Act, 29 U.S.C. § 104 (1976).

Union Vicarious Tort Liability

in damages because of unlawful acts of persons who are either directly or indirectly connected with those who are trying to defeat the purposes of the strike.⁶⁴

Accordingly, the United States Supreme Court in *Gibbs* was persuaded that Congress intended unions to be protected from vicarious liability for unauthorized torts committed by their members.⁶⁵

The expansive scope of both the Washington and federal Acts further supports the *Gibbs* approach to protection for unions. Both Acts apply to cases “involving or growing out of a labor dispute.”⁶⁶ RCW § 49.32.-110, borrowing from section 13 of the Norris-LaGuardia Act, defines “labor dispute” quite broadly as “any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.”⁶⁷ Since tortious conduct may easily occur in such a “labor dispute” there is little logic in protecting a union from injunctions but denying such protection from damage actions.

This conclusion also rebuts the argument in Justice Rosellini’s concurrence that the Washington court was not bound by either *United Brotherhood* or *Gibbs* because those cases involved economic harms while *Bu-*

64. S. REP. NO. 163, 72d Cong., 1st Sess., Part I (1933).

65. “The driving force behind § 6 . . . was the fear that unions might be destroyed if they could be held liable for damage done by acts beyond their practical control.” *Gibbs*, 383 U.S. at 736–37 (footnotes omitted). While the Court has conceded that the Norris-LaGuardia Act addressed a different labor-management situation than that which more currently exists, *Boys Markets, Inc. v. Retail Clerks Local 770*, 398 U.S. 235, 250 (1970), it has continued to find the original purposes of the Act to be viable. *Id.* at 253.

The Fifth Circuit Court of Appeals has added its interpretation of the original function of including a union liability provision in the Norris-LaGuardia Act:

Imposing liability on the union for the unauthorized lawlessness of its more improvident members would penalize the union lawfully engaged in using the legitimate economic weapons thought necessary for the proper resolution of labor-management conflicts. Therefore, Congress enacted section 106, requiring clear proof of union participation in, authorization, or ratification of unlawful conduct before liability could attach.

Scott v. Moore, 640 F.2d 708, 728 (5th Cir. 1981). See also *Brotherhood of Railroad Trainmen v. Chicago River & Ind. R.R.*, 353 U.S. 30, 39 (1957).

66. 29 U.S.C. § 101 (1976); WASH. REV. CODE § 49.32.011 (1979).

67. WASH. REV. CODE § 49.32.110 (3) (1979). See also 29 U.S.C. § 113(c) (1976). Indeed, a variety of circumstances have been considered to be labor disputes in Washington. These have included cases in which only one employee belonged to a union, *Ostroff v. Laundry & Dye Works Drivers’ Local 566*, 39 Wn. 2d 693, 237 P.2d 784 (1951), and in which a company violated a contract with a union that restricted the sale of company bakery goods, *Marvel Baking Co. v. Teamsters Union Local 524*, 5 Wn. 2d 346, 105 P.2d 46 (1940). See also *Swenson v. Seattle Cent. Labor Council*, 27 Wn. 2d 193, 177 P.2d 873 (1947), where the court noted that a jurisdictional dispute between two rival unions could be a “labor dispute,” but was not one in the case at bar because one union had been certified as the exclusive agent of the workers by the National Labor Relations Board.

chanan involved physical harm.⁶⁸ This is solely a factual distinction, one that has been given no further support in any cases or statutes addressing a union's vicarious liability. Justice Rosellini assumed, without citing any authority, that the United States Supreme Court would decide a future tort case involving physical harm differently than it decided *Gibbs*, a tort case involving an economic harm.⁶⁹ In fact, an indication to the contrary exists in *United Brotherhood* where the Court stated that "[t]he limitations of [section 6] are upon all courts of the United States in all matters growing out of labor disputes, covered by the Act, which may come before them."⁷⁰ This willingness of the United States Supreme Court to broadly apply the union-liability standard is entirely consistent with the congressional decision to include among labor disputes "any controversy concerning terms or conditions of employment."⁷¹

The majority's other arguments against applying the limited liability provision to tort cases are also unconvincing. The majority thought that the title of the Labor Disputes Act limited its application to restraining orders, injunctions, and contempt matters. Justice Horowitz convincingly rebutted this limitation, explaining that, under Washington law, the title of an act should not be considered as controlling the scope and intent of a statute.⁷² Nor does the legislature's silence following *Titus* necessarily preclude applying RCW § 49.32.070 to tort actions. The United States Supreme Court has cautioned that congressional silence alone does not indicate the adoption of a controlling rule of law.⁷³ Also, Justice Horowitz distinguished the two cases cited by the court to support its use

68. 94 Wn. 2d at 513-14, 617 P.2d at 1006-07.

69. *Id.* The United States Supreme Court may yet supply a clear response to Justice Rosellini's speculation. The Court currently is considering a petition for certiorari in a case which presents questions of union liability under pendent state tort claims. *Kerry Coal Co. v. United Mine Workers of America*, 637 F.2d 957 (3d Cir. 1981), *petition for cert. filed*, 49 U.S.L.W. 3972 (U.S. June 30, 1981) (No. 80-1891).

70. 330 U.S. at 401 (emphasis added). Justice Frankfurter was concerned that such a broad application of § 6 of the Norris-LaGuardia Act too easily would allow unions to avoid responsibility for wrongful conduct of members. *Id.* at 415 (dissenting opinion); see note 35 *supra*. It is true that, under the federal liability provision, there is a greater likelihood that a union may publicly discourage member misconduct, while privately remaining a party to it. This weakness in the federal approach, however, must be weighed against the protection which it provides the union making a good faith effort to control its members during a labor dispute. Also, the potential for a union to be brought before the National Labor Relations Board on unfair labor practice charges is an incentive for it to eschew wrongful behavior in the course of organizational activities. See, e.g., *ILWU Local 6 v. Sunset Line & Twine Co.*, 79 N.L.R.B. 1487 (1948). Admittedly, this latter incentive raises the anomalous possibility that a union could be found responsible for unfair labor practices by the National Labor Relations Board while remaining protected from in-court damage liability for the same conduct.

71. Norris-LaGuardia Act, 29 U.S.C. § 113(c) (1976) (emphasis added).

72. 94 Wn. 2d at 518, 617 P.2d at 1009 (dissenting opinion).

73. *Boys Markets, Inc. v. Retail Clerks Local 770*, 398 U.S. 235, 241 (1970).

Union Vicarious Tort Liability

of seventeen years of legislative inactivity, on the ground that they involved statutes which were enacted *after* judicial interpretation of earlier related laws.⁷⁴

C. Civil Cases In General Under RCW § 49.32.070

The *Buchanan* decision is likely to be applied to a number of civil actions against unions besides those involving tort liability. In his concurrence, Justice Rosellini found that all civil actions for damages fall outside of the Washington Act.⁷⁵ He was convinced that the *United Brotherhood* holding was relevant only to criminal prosecutions because the legislative history cited showed that proponents of section 6 of the Norris-LaGuardia Act were concerned mostly with reducing the number of criminal conspiracy cases brought against unions.⁷⁶

Justice Horowitz, in dissent, strongly argued that this view is an unnecessarily narrow interpretation of *United Brotherhood* and the Senate Judiciary testimony referred to therein. He pointed out that the Supreme Court in *Gibbs* relied upon its earlier *United Brotherhood* examination of the legislative history of the Norris-LaGuardia Act to enlarge the application of the federal liability provision. Justice Horowitz specifically noted⁷⁷ the *Gibbs* Court's use of language from *United Brotherhood* concerning the thrust of section 6 of the Act:

“[I]ts purpose and effect was to relieve organizations . . . and members of those organizations from *liability for damages or imputation of guilt* for lawless acts done in labor disputes by some individual officers or members of the organization, without clear proof that the organization or member charged with responsibility for the offense actually participated, gave prior

74. 94 Wn. 2d at 517–18, 617 P.2d at 1009 (dissenting opinion).

75. *Id.* at 513–14, 617 P.2d at 1006–07. Justice Rosellini quoted from *United Brotherhood*:

“Thus § 6 limited responsibility for acts of a co-conspirator—a matter of moment to the advocates of the bill. Before the enactment of § 6, when a conspiracy between labor unions and their members, prohibited under the Sherman Act, was established a widely publicized case had held both the unions and their members liable for all overt acts of their co-conspirators. This liability resulted whether the members or the unions approved of the acts or not or whether or not the acts were offenses under the criminal law. While of course participants in a conspiracy that is covered by § 6 are not immunized from responsibility for authorized acts in furtherance of such a conspiracy, they now are protected against liability for unauthorized illegal acts of other participants in the conspiracy.”

Id. at 512–13, 617 P.2d at 1006 (quoting *United Brotherhood of Carpenters v. United States*, 330 U.S. 395, 404 (1947)).

76. 94 Wn. 2d at 513, 617 P.2d at 1006.

77. *Id.* 515, 617 P.2d at 1008 (dissenting opinion).

authorization, or ratified such acts after actual knowledge of their perpetration."⁷⁸

Although dictum, this passage demonstrates the Court's willingness to apply section 6 to both criminal matters (imputation of guilt) and civil matters (liability for damages). Given this broad statement and congressional concern with overburdening union leaders with responsibility for the acts of uncontrolled members, Justice Horowitz thought that RCW § 49.32.070 need not be limited to criminal prosecutions. He further asserted that, as a matter of statutory construction, the Washington Supreme Court was obliged to interpret its state law in accordance with the construction already given to the federal legislation from which it was borrowed.⁷⁹

Finally, neither the majority nor the concurring opinions in *Buchanan* directly rebutted the *Gibbs* argument for civil application of section 6 that, under the Labor Management Relations Act (LMRA), a union's liability for members' violations of the LMRA is determined under agency standards, while offenses outside of the LMRA are to continue being decided under the Norris-LaGuardia Act.⁸⁰ In finding the Act to be appropriate to all non-LMRA claims, the Court in *Gibbs* interpreted Congress's intent as desiring the maximum scope for section 6 of the Norris-LaGuardia Act. Thus, it is difficult to understand why conduct which was evaluated by the Supreme Court as belonging within the federal liability standard should not similarly fall within the identical Washington liability provision.

V. PROPOSED UNION LIABILITY TEST

In addition to injunctions, restraining orders, and contempt matters, RCW § 49.32.070 should be applied to all civil actions for damages which arise out of labor disputes. The Norris-LaGuardia and Labor Disputes Acts accommodate many competing interests in the workplace with minimum judicial interference. A union which is conducting legitimate organizing and bargaining activities should not be subjected to potential

78. 383 U.S. at 736 (emphasis added) (quoting *United Brotherhood of Carpenters v. United States*, 330 U.S. 395, 403 (1947)). Justice Rosellini, in concurrence, apparently ignored this language, stating that the court in *Titus* "was not unjustified in concluding . . . that the United States Supreme Court had found the thrust of the federal provision to be aimed at criminal prosecutions, rather than at damage suits by persons who have suffered physical injuries at the hands of overzealous picketers." 94 Wn. 2d at 513, 617 P.2d at 1006.

79. *Id.* at 516, 617 P.2d at 1008 (dissenting opinion).

80. See note 45 and accompanying text *supra*.

liability for isolated acts of wrongful conduct which it is powerless to foresee or prevent, and which may unduly chill its lawful conduct.

The Fifth Circuit Court of Appeals recently demonstrated the manner in which a union's vicarious liability should be determined. In *Scott v. Moore*,⁸¹ several unions were charged with responsibility for acts of mob violence. In assessing their liability for members' assaults, the court examined the circumstances of the illegitimate behavior. In this case, the court found that the members' unlawful activity did not occur in conjunction with an ongoing labor dispute, as defined in section 13(c) of the Norris-LaGuardia Act. So finding, the court then denied the defendant unions the protection of the federal act.⁸²

This approach is commendable in applying the section 6 test to all cases involving labor disputes. In future Washington tort actions, a judgment of union liability should start with an assessment of whether the wrongful conduct was directly related to a labor dispute as defined in RCW § 49.32.110.⁸³ Under the facts of *Buchanan*, for example, a court would find that the assault occurred in conjunction with legitimate union activity (a strike), thus falling within the statute. It then would decide whether there was sufficient proof that the Teamsters actually had participated in, authorized, or ratified the tortious acts. If, on the other hand, no sanctioned union activity was in progress at the time of the assault, the Teamsters' responsibility then would be judged under common-law rules of agency.

VI. CONCLUSION

Despite legislative efforts to regulate union and management conduct, isolated acts of violence are likely to remain an unfortunate element of American labor relations for many years to come. As a result of the *Buchanan* decision, a union's vicarious liability for members' assaults will continue to be gauged by common-law rules of agency in Washington state courts. Under federal law, the same liability will be subjected to the stricter test set forth in the Norris-LaGuardia Act.

81. 640 F.2d 708 (5th Cir. 1981). This case involved an action brought under 42 U.S.C. § 1985(3) (1976) (a civil rights statute) by a construction company and two of its employees against a trades council, its unions, and individual members. Plaintiffs alleged that defendants planned and executed violence on a construction site.

82. 640 F.2d at 728-29. See generally text accompanying notes 66 & 67 *supra* (discussion of § 13(c) of the Norris-LaGuardia Act, 29 U.S.C. § 113(c) (1976)).

83. See generally notes 66 & 67 and accompanying text *supra* (discussion of RCW § 49.32.110). 110).

This disparity is unnecessary in view of the guidance provided by the United States Supreme Court in *United Brotherhood* and *Gibbs*. The Fifth Circuit Court of Appeals recently has given an excellent illustration of how the problem of determining a union's liability may be handled in future tort cases. Given the policies behind the Labor Disputes Act, broad application of RCW § 49.32.070 to all cases arising from labor disputes, including those involving civil liability for torts, is appropriate.

Paul M. Feinsod