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## Enjoining Politically Motivated Strikes in Federal Courts: *The Jacksonville Bulk Terminals Case*

*The United States Supreme Court, in Jacksonville Bulk Terminals, Inc. v. International Longshoremen's Association, acknowledged that a work stoppage entirely motivated by political goals constitutes a "labor dispute" within the Norris-La Guardia Act which is prohibited from injunctive relief by a federal court. In so ruling, the Supreme Court found the Boys Markets, Inc. v. Retail Clerks Union and Buffalo Forge Co. v. United Steelworkers of America, AFL-CIO exceptions, which allow an injunction to issue pending arbitration in situations where the dispute underlying the work stoppage is arbitrable, to be inapplicable to the no-strike clause in the collective-bargaining agreement scrutinized. The case represents a victory for labor while leaving the employer in the precarious position of having "bargained for" no-strike clauses which are ineffective. The author delineates the extent of labor's victory and presents the options available for management.*

### I. INTRODUCTION

In *Jacksonville Bulk Terminals, Inc. v. International Longshoremen's Association*,<sup>1</sup> the Supreme Court considered the authority of a federal court to enjoin a politically motivated work stoppage. An employer commenced the action pursuant to section 301 of the Labor Management Relations Act (LMRA)<sup>2</sup> seeking not only to enforce the union's obligations under a collective bargaining agreement, but also to enjoin the boycott pending an arbitrator's decision concerning whether the strike violated the aforementioned agreement.

The Court addressed two distinct issues in its attempt to delineate the boundaries of federal court authority in this particular area. Initially, the Court addressed whether broad anti-injunction

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1. 102 S. Ct. 2673 (1982).

2. Labor Management Relations Act § 301(a) (1976), 29 U.S.C. § 185 (1976), allows federal jurisdiction for violations of collective bargaining agreements and provides:

(a) Suits for violations of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, 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.*

policies stated in section four of the Norris-La Guardia Act (NLA)<sup>3</sup> apply to politically motivated work stoppages. Second, if these policies do apply, it considered whether such work stoppages may be enjoined by a federal court under the rationale of *Boys Markets, Inc. v. Retail Clerks Union*<sup>4</sup> and *Buffalo Forge Co. v. United Steelworkers of America, AFL-CIO*.<sup>5</sup>

The case is another in a series of cases<sup>6</sup> where the Supreme Court was forced to accommodate the LMRA<sup>7</sup> with the NLA.<sup>8</sup> The Court was again called upon to harmonize the policy favoring the arbitration process,<sup>9</sup> with the policy discouraging the use of injunctions in labor disputes. Acknowledging that the broad anti-injunction provisions of the NLA apply to politically motivated work stoppages, the Supreme Court, in *Jacksonville Bulk Terminals*, held that the work stoppage could not be enjoined under the

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3. Norris-La Guardia Act § 4 (1976), 29 U.S.C. § 104 (1976) reads as follows:

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 doing, whether singly or in concert, any of the following acts:

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

*Id.* However, the injunction ban is not absolute. Norris-La Guardia Act § 7, 29 U.S.C. § 107 (1976), authorizes the issuance of injunctions after hearings are held, with appropriate notice to affected persons, and findings of fact made by the court. These findings of fact must generally show: that unlawful acts have or will be committed; that irreparable injury to complainant's property will result; that the greater injury will be inflicted upon complainant by the denial of the relief than will be inflicted upon defendants by the granting of relief; that there is no adequate remedy at law; and that the public officers in charge with the duty to protect a complainant's property are unable or unwilling to provide adequate protection. A temporary restraining order (effective for no longer than five days), however, may be issued without notice if substantial and irreparable injury will be unavoidable in the absence of such restraining order. See *Marine Cooks & Stewards v. Panama Steamship Co.*, 362 U.S. 365 (1960). Note, however, that since section 4 prohibits the issuance of an injunction, mere compliance with the procedures of § 7, 29 U.S.C. § 107 (1976), will not be sufficient to allow the injunction to issue.

Section 8, 29 U.S.C. § 108 (1976) places further restrictions on the issuance of an injunction. Any complainant who has failed to comply with any obligation imposed by law or who has failed to pursue each channel of peaceful settlement (i.e., negotiation, mediation and arbitration) will not be granted injunctive relief. Compliance with some but not all of the criteria will be insufficient even though the section is phrased in the disjunctive. *Brotherhood of RR Trainmen Enterprise, Lodge 27 v. Toledo P & W RR*, 321 U.S. 50, 60 (1944).

4. 398 U.S. 235 (1970).

5. 428 U.S. 397 (1976).

6. See *infra* notes 56-79 and accompanying text.

7. 29 U.S.C. §§ 141-146, 171-197 (1976). See *supra* note 2.

8. 29 U.S.C. §§ 101-115 (1976). See *supra* note 3.

9. This policy was enunciated in what has become known as the Steelworker's Trilogy: *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. 564 (1960).

*Boys Markets* exception, pending an arbitrator's determination of the boycott's legality. In reaching this conclusion, the Court acknowledged that a work stoppage, even when entirely motivated by political goals, constitutes a "labor dispute" within the NLA. The Court further found that congressional intent prohibited such strikes from being enjoined by federal courts. At the same time, the Court also found that Congress intended to give federal courts jurisdiction of collective bargaining agreement violations via the LMRA.

Although the necessity of accommodating the two acts looms heavily in the Supreme Court's analysis of this area of labor law, the Court did not seem to rest its decision on an accommodation theory. Instead, *Jacksonville Bulk Terminals* represents a tremendous victory for labor in that it reestablishes the authority of the NLA and at the same time refuses to broaden the LMRA. Furthermore, the case leaves employers in the precarious position of having "bargained for" no-strike clauses which are ineffective. It is the extent of labor's victory and the options remaining for management which this note will analyze.

## II. FACTUAL BACKGROUND

On January 4, 1980, President Carter, in response to the Soviet Union's invasion of Afghanistan, issued specific directives, pursuant to the Export Administration Act,<sup>10</sup> implementing an embargo on exports to the Soviet Union.<sup>11</sup> Imports, however, were not affected by the embargo. On January 9, 1980, the International Longshoremen's Association (ILA) announced that all local unions on the Atlantic and Gulf coasts were to boycott any cargo bound to or coming from the Soviet Union.<sup>12</sup> Thus, the ILA boycott was much broader than the Presidential directive. This boy-

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10. 50 U.S.C. §§ 2401-2040 (1976 & Supp. III, 1979).

11. *Jacksonville Bulk Terminals, Inc. v. International Longshoremen's Ass'n*, 102 S. Ct. 2673, 2677 (1982).

12. International President of the ILA, Thomas W. Gleason, made the following announcement:

In response to overwhelming demands by the rank and file members of the Union, the leadership of the ILA today ordered immediate suspension in handling all Russian ships and all Russian cargoes in ports from Maine to Texas and Puerto Rico where ILA workers are employed.

This order is effective across the board on all vessels and all cargoes. Grain and other foods as well as high valued general freight. However,

cott was purely a political protest of the Soviet aggression.<sup>13</sup> Economic gain was not the stimulus for the boycott, and the union employees had no specific dispute with any particular employer. Furthermore, the ILA did not seek or solicit any action from the "employer of union members and nothing that these employers might do could have eliminated the cause of the boycott."<sup>14</sup>

On January 15, 1980, several Norwegian vessels entered the shipping terminal of Jacksonville Bulk Terminals [JBT] in the Port of Jacksonville, Florida to take on cargo for transport to the Soviet Union.<sup>15</sup> JBT is a party to the collective bargaining agreement between the Jacksonville Maritime Association and several local unions affiliated with the ILA. The collective bargaining agreement between JBT and Local 1408 contains both a no-strike clause<sup>16</sup> and an arbitration provision for the resolution of all disputes.<sup>17</sup>

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any Russian ship now in process of loading or discharging at a waterfront will be worked until completion.

The reason for this action should be apparent in light of international events that have affected relations between the U.S. & Soviet Union.

However, the decision by the Union leadership was made necessary by the demands of the workers.

It is their will to refuse to work Russian vessels and Russian cargoes under present conditions of the world.

People are upset and they refuse to continue the business as usual policy as long as the Russians insist on being international bully boys. It is a decision in which the Union leadership concurs.

Brief for Respondents at 2, n.2, Jacksonville Bulk Terminals, Inc. v. International Longshoremen's Ass'n, 102 S. Ct. 2673 (1982).

13. Jacksonville Bulk Terminals, Inc. v. International Longshoremen's Ass'n, 626 F.2d 455, 459 (5th Cir. 1980).

14. *Id.*

15. Jacksonville Bulk Terminals, Inc. v. International Longshoremen's Ass'n, 102 S. Ct. 2673, 2677 n.3 (1982). The corporate structure, of which JBT is a part, is as follows: JBT is a wholly-owned subsidiary of Oxy Chemical Corporation, which is a subsidiary of Hooker Chemical Corporation. Ownership of all these corporations is ultimately vested in Occidental Petroleum Company. Hooker Chemical Company manufactures superphosphoric acid (SPA) at a manufacturing facility in Florida. Pursuant to a bilateral trade agreement between Occidental and the Soviet Union, SPA is shipped to the Soviet Union from the JBT facility in Jacksonville. *Id.* at 2677 n.3.

16. The no-strike clause provides:

During the term of this Agreement, . . . the Union agrees there shall not be any strike of any kind or degree whatsoever, . . . for any cause whatsoever; such causes including but not limited to, unfair labor practices by the Employer or violation of this Agreement. The right of employees not to cross a bona fide picket line is recognized by the Employer. . . .

*Id.* at 2678.

17. The Agreement establishes that:

Matters under dispute which cannot be promptly settled between the Local and an individual Employer shall . . . be referred . . . to a Port Grievance Committee. . . . In the event (this) Committee is unable to reach a majority decision within 72 hours after meeting to discuss the case, it shall employ a professional arbitrator. . . .

Pursuant to the national ILA resolution, the members of Local 1408 refused to transport the cargo onto the Norwegian vessels. JBT, seeking to compel arbitration and requesting a temporary restraining order and a preliminary injunction to halt the boycott, initiated an action pursuant to section 301(a) of the LMRA.<sup>18</sup> The United States District Court for the Middle District of Florida ordered the union to process any grievance in accordance with the procedure contained in the arbitration clause of the collective bargaining agreement.<sup>19</sup> The court also enjoined the union from refusing to load the Norwegian vessels.<sup>20</sup> Subsequently, the vessels were loaded by the affiliated members of the ILA and left Jacksonville.<sup>21</sup>

The Fifth Circuit Court of Appeals, relying on *United States Steel Corp. v. United Mine Workers*,<sup>22</sup> reiterated that a strike

*Id.* at 2677-78 n.4.

18. *Id.* at 2677; *see supra* note 2.

19. *Jacksonville Bulk Terminals, Inc. v. International Longshoremen's Ass'n*, 626 F.2d 455, 461 (5th Cir. 1980).

20. *Id.*

21. Thereafter, the International Trade Administration of the Department of Commerce changed the regulations governing the exportation of phosphoric acid, effective February 4, 1980. *See* 45 Fed. Reg. 8293 (1980) (requiring validated licenses to ship phosphate to the U.S.S.R., rather than general licenses which were previously required).

On February 25, 1980, President Carter extended the trade embargo of January 4 to include SPA. On April 24, 1981, President Reagan lifted the SPA embargo as part of his decision to resume the sale of grain to the Soviet Union. On April 24, 1981 and June 5, 1981, the leadership of the ILA recommended that its affiliate local unions resume handling goods bound to or coming from the Soviet Union. 102 S. Ct. at 2677 n.1.

22. 519 F.2d 1236 (5th Cir. 1975), *rehearing denied*, 526 F.2d 376 (5th Cir.), *cert. denied*, 428 U.S. 910 (1976). The case involved the "national policy of this country's permitting the importation of South African coal." *Id.* at 1247. The court recognized that United States Steel had a remedy for a secondary boycott through a National Labor Relations Board § 10(1) injunction, 29 U.S.C. § 160(j) (1970), or a Taft-Hartley § 303 damage suit under the National Labor Relations Act § 8(b)(4), 29 U.S.C. § 158(b)(4) (1970). *Id.* at 1247 n.23. However, the court refused to allow an injunction on a *Boys Markets* theory. The Court maintained it was beyond belief that the parties intended to arbitrate the issue of the importation of South African coal. *Id.* at 1247. The Fifth Circuit noted that the *United States Steel Corp.* decision, rendered on September 24, 1975, was apparently inconsistent with the decision rendered shortly thereafter in *West Gulf Maritime Ass'n v. ILA*, 413 F. Supp. 372 (S.D. Tex. 1975), *aff'd summarily*, 531 F.2d 574 (5th Cir. 1976). In *West Gulf Maritime Association* the district court held that the underlying dispute involved a political issue which was not a "labor dispute" within the purview of § 4 of the NLA. 413 F. Supp. at 375. The Fifth Circuit, recognizing the inconsistency of the two decisions stated:

The possibility of such a regrettable occurrence appears to lurk continually in the proceedings of a multi-panel court for it is difficult to devise a

called to further the political goals of the union involved or grew out of a labor dispute within the meaning of the NLA.<sup>23</sup> The Court reasoned that a *Boys Markets* injunction could be issued only if the strike were over a dispute between the union and the employer that was subject to the arbitration provisions of the contract. According to the Fifth Circuit, the "crucial distinction is whether arbitration would resolve the dispute [which] led to the strike."<sup>24</sup>

The circuit court rationalized that in the JBT situation no arbitrator could resolve the grievance between the ILA and the Soviet Union. While the district court was correct in compelling arbitration of whether or not the work stoppage violated the no-strike provisions of the collective bargaining agreement, the injunction granted, pending the arbitrator's decision, went beyond the Court's power.<sup>25</sup> In this respect, the Fifth Circuit refused to broaden the exception carved out by *Boys Markets*.

### III. LEGISLATIVE HISTORY

When Congress passed the Clayton Act on October 15, 1914,<sup>26</sup> it viewed the Act as a "red letter day for labor." The Clayton Act exempted peaceful labor activities from the Sherman Anti-Trust Act<sup>27</sup> which prohibited unlawful trusts or conspiracies in restraint of trade.<sup>28</sup> It soon became apparent that the Clayton Act did not

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process that will expose the similarity of issues in pending cases before decisions are published. . . . To the extent that they are inconsistent, we consider the rationale of *United States Steel Corp.* to be more persuasive. 626 F.2d at 465. The Supreme Court cited the *United States Steel Corp.* decision as being "in accord" with the Second Circuit decision affirmed by the Supreme Court in *Buffalo Forge Co. v. United Steelworkers*, 428 U.S. 397 (1976). *Id.* at 303 n.9. See *infra* note 72 and accompanying text.

23. 626 F.2d at 465.

24. *Id.* at 467.

25. *Id.*

26. 15 U.S.C. §§ 12-27 (1976). See also 29 U.S.C. §§ 52, 53.

27. 15 U.S.C. §§ 1-7 (1976).

28. 75 CONG. REC. 5488 (1932). Senator Celler suggests that labor unions were originally believed to be exempt from the interdict of the Sherman Anti-Trust Act. He states:

At this point, it is interesting to note, that on March 25, 1890, Senator Sherman proposed a proviso excluding labor and farm organizations from the terms of the act. Although this proviso was agreed to in the Committee of the Whole, it was omitted when the bill was again reported out of the committee to the floor of the Senate. And the *Congressional Record* does not disclose whether the proviso was omitted because of opposition to it, or because of the belief that the act itself so clearly excluded labor that the proviso was unnecessary. In any event, the speeches of Senator Hoar, *Twenty-First Congressional Record*, page 2729; of Senator Stewart, *ibidem*, page 2606; and of Senator Teller, *ibidem*, page 2562, seem to imply that the proviso was unnecessary, and that labor unions were not to be deemed as combinations in restraint of trade.

*Id.*

bring about the immunization of labor organizations from prosecution or suit under the anti-trust laws. Through the issuance of injunctions, federal courts were converted into strike-breaking agencies, and, on numerous occasions, even unjustifiably enjoined peaceful strike activity. "Labor's so-called bill of rights became a mere shambles."<sup>29</sup>

*Duplex Printing Press Co. v. Deering*<sup>30</sup> is an example of the manner in which the courts had narrowly construed the Clayton Act's labor exemption from the Sherman Act's prohibition against conspiracies to restrain trade. The Supreme Court held that the Clayton Act only restricted the use of injunctions in favor of the immediate disputants and that other members of the union not standing in the proximate relation of employer and employee could be enjoined. As Congress was to later note, "[o]f course, it is fundamental that a strike is generally an idle gesture if confined only to the immediate disputants."<sup>31</sup>

In response, Congress, in 1932, reevaluated the equitable jurisdiction of federal courts and enacted the NLA.<sup>32</sup> The NLA specifically addressed *Duplex Printing Press* by broadening the definition of a person participating in a labor dispute to include others than the immediate disputants. One of the Act's most important provisions prohibited federal courts from issuing injunctions in labor disputes against employees who cease or refuse to work. Section 13(c) of the NLA broadly defined the term "labor

29. *Id.*

30. 254 U.S. 443 (1921).

31. H.R. REP. NO. 669, 72d Cong., 1st Sess. 8 (1932).

32. 75 Cong. Rec. 5478 (1932). Congressman La Guardia stated:

If the courts had not emasculated and purposely misconstrued the Clayton Act, we would not today be discussing an anti-injunction bill. The trouble is that a few — and I am glad to say a few — Federal judges seeking to curry favor, social or other, trying to play up to men they considered financially powerful, were willing to disregard a sacred trust, mete out one-sided justice, take the employer side of a labor dispute, and act as a strike-breaking agency. That, gentlemen, is the reason, the history, and the necessity of my bill.

*Id.* at 5478. See also H.R. REP. NO. 669, 72d Cong., 1st Sess. 7-8 (1932); 75 CONG. REC. 5466, 5467, 5468; remarks of Senator Wagner:

Under the blighting effect of the law as it has developed, we have seen the entire coal industry suffer disorder, violence, disintegration. We have seen the Federal courts converted into strike-breaking agencies. We have seen freedom of speech, freedom of association, even the freedom to cooperate in refraining from work, smothered under the blanket of injunctions which now covers the Nation.

*Id.* at 4915.



dispute” to include “any controversy concerning terms or conditions of employment . . . regardless of whether or not the disputants stand in the proximate relation of employer and employee.”<sup>33</sup>

The second line of analysis concerning the NLA reveals that Congress was well aware that the Act’s broad anti-injunction policy would apply to politically motivated strikes such as the work stoppage in *Jacksonville Bulk Terminals*. Representative Beck,<sup>34</sup> an opponent of the Act, argued that “the difficulty with [this] bill is that it takes no account whatever of the motives and purposes with which a nationwide strike or boycott can be commenced and prosecuted.”<sup>35</sup> Accordingly, he proposed an amendment to the Act which would permit injunctions to enjoin strikes called for ulterior purposes. Representative Oliver<sup>36</sup> responded that due to the oppressive nature of injunctions which had been issued in the past, federal courts should not have the power to enjoin strikes, even if the strikes are political in nature.<sup>37</sup> The House agreed with Representative Oliver and rejected Representative Beck’s amendment.<sup>38</sup> The Supreme Court, recognizing the aforementioned legislative intent of the Act, has acknowledged that “[t]he Act does not concern itself with the background or the motives of the dispute.”<sup>39</sup>

The enforcement of collective bargaining agreements, the sec-

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33. Norris-La Guardia Act § 13(c) (1976), 29 U.S.C. § 113(c) provides in its entirety:

The term “labor dispute” includes 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.

*Id.* It is also interesting to note that a narrower definition of the term “labor dispute” was offered as an amendment in the Senate and was rejected on the grounds that it contained language which was almost exactly the same as the definition used in § 20 of the Clayton Act. That particular language had been held in *Duplex Printing Co. v. Deering*, 254 U.S. 443, 471-72 (1921), to apply only to an employer and his employees. 75 Cong. Rec. 4916 (1932) *Id.* (remarks of Senator Wagner); see also *id.* at 4686, where a committee minority agreed that an injunction should not have been issued in *Duplex*, 254 U.S. 443 (1921).

34. Representative from Pennsylvania.

35. 75 CONG. REC. 5472 (1932).

36. Representative from New York.

37. 75 CONG. REC. at 5480-81 (1932).

38. Amendment offered by Mr. Beck: After the word acts in Section 4, line 5, page 4, insert the following:

Except where said acts are performed or threatened for an unlawful purpose or with an unlawful intent, or are otherwise in violation of any statute of the United States.

*Id.* at 5507. This proposed amendment was not ratified. For relevant portions of the text of § 4, see *supra* note 3; *Jacksonville Bulk Terminals v. International Longshoremen’s Ass’n*, 102 S. Ct. at 2683 (1982).

39. *New Negro Alliance v. Sanitary Grocery Co.*, 303 U.S. 552, 561 (1937); *Jack-*

ond federal policy in *Jacksonville Bulk Terminals*, was mandated by Congress in 1947 in the LMRA. Congress' primary motive for enacting the LMRA<sup>40</sup> was not to impair the social gains which employees had received by reason of the NLA, but rather to promote collective bargaining between labor and management.<sup>41</sup> Once a collective bargaining agreement had been established between the parties, section 301 of the LMRA provided federal courts with jurisdiction over "[s]uits for violation of contracts between an employer and a labor organization."<sup>42</sup> The legislative history of the LMRA shows that Congress, through the enactment of other sections, knew how to lift the bar of the NLA when it wished to do so. The legislative history of section 301, however, shows that Congress considered and deliberately rejected any repeal of the political strike provisions of the NLA.<sup>43</sup>

Section 2(13) of the House bill defined a "sympathy strike" as a strike which is "conducted not by any reason of any dispute between the employer and employees . . . but rather by reason of . . . disagreement with some governmental policy."<sup>44</sup> Section 12(a)(3)(A) then termed a sympathy strike as an unlawful concerted activity.<sup>45</sup> This type of activity was made unlawful and the

*sonville Bulk Terminals v. International Longshoremen's Ass'n*, 102 S. Ct. at 2682 (1982).

40. 29 U.S.C. §§ 141-167, 171-197 (1976).

41. S. REP. NO. 105, 80th Cong., 1st Sess. 1-2 (1947), *reprinted in* 1 NLRB, LEGISLATIVE HISTORY OF THE LABOR MANAGEMENT RELATIONS ACT, at 407, 408 (1948) [hereinafter cited as 1 NLRB LEGISLATIVE HISTORY OF THE LMRA]; *see Note, Buffalo Forge Co. v. United Steelworkers: The Supreme Court Sanctions Sympathy Strikers*, 25 CLEV. ST. L. REV. 435, 437-38 (1976).

42. *See supra* note 2. The relevant legislative history of § 301 of the LMRA is also discussed at length in *Sinclair Refining Co. v. Atkinson*, 370 U.S. 195, 205-209 (1962).

43. *See supra* note 42. *See also, e.g.*, 29 U.S.C § 160 (prevention of unfair labor practices), § 178(b) (injunctions during national emergency), § 186(e) (restrictions of financial transactions).

44. H.R. 3020, 80th Cong., 1st Sess., § 2(13) (1947), *reprinted in* 1 NLRB LEGISLATIVE HISTORY OF THE LMRA, *supra* note 41 at 168.

Section 2(13) provides in its entirety:

(13) The term "sympathy strike" means a strike against an employer, or other concerted interference with an employer's operations, which is called or conducted not by reason or any dispute between the employer and the employees on strike or participating in such concerted interference, but rather by reason or either (a) a dispute involving another employer or other employees of the same employer, or (b) disagreement with some governmental policy.

H.R. 3020, 80th Cong., 1st Sess. § 2(13) (1947).

45. H.R. 3020, 80th Cong., 1st Sess., 12 (1947), *reprinted in* 1 NLRB LEGISLATIVE HISTORY OF THE LMRA, *supra* note 41 at 204, 205.

NLA was made inapplicable in section 302(e)<sup>46</sup> of the House bill. Had the House bill been adopted, it would have made the NLA inapplicable to suits initiated by private parties to enjoin strike activity which they deemed in violation of a collective bargaining agreement. The House Report specifically noted that strikes "against a policy of national or local government which the employer cannot change"<sup>47</sup> were recognized as "unlawful concerted activit[ies]."<sup>48</sup> Under the House version of the bill, any person injured by such activity could sue the persons responsible, and the NLA would be inapplicable to such suits.<sup>49</sup> On the other hand, the Senate bill, while granting federal courts jurisdiction over suits for breach of collective bargaining agreements, contained no provision making the NLA inapplicable to such suits.<sup>50</sup> Instead, the Senate version classified such a breach as an unfair labor practice,<sup>51</sup> which like any unfair labor practice, could be enjoined by a suit initiated by the National Labor Relations Board.<sup>52</sup> How-

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46. H.R. 3020, 80th Cong., 1st Sess. § 302(e) (1947), *reprinted in* 1 NLRB, LEGISLATIVE HISTORY OF THE LMRA, *supra* note 41 at 222.

Section 302(e) reads in its entirety:

(e) In actions and proceedings involving violations of agreements between an employer and a labor organization or other representative of employees, the provisions of the Act of March 23, 1932, entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity and for other purposes," shall not have any application in respect of either party.

H.R. 3020, 80th Cong., 1st Sess. § 302(e) (1947).

47. H.R. REP. NO. 245, 80th Cong., 1st Sess. 24 (1947), *reprinted in* 1 NLRB, LEGISLATIVE HISTORY OF THE LMRA, *supra* note 41 at 315.

48. H.R. Rep. No. 245, 80th Cong., 1st Sess. 44 (1947), *reprinted in* 1 NLRB, LEGISLATIVE HISTORY OF THE LMRA, *supra* note 41 at 335.

49. *Id.* The report reads in pertinent part:

Under this section, these practices are called by their correct name, unlawful concerted activities. It is provided that any person injured in his person, property, or business by an unlawful concerted activity affecting commerce may sue the person or persons responsible for the injury in any district court having jurisdiction of the parties and recover damages. The bill makes inapplicable in such suits the Norris-La Guardia Act, which heretofore has protected parties to industrial strife from the consequences of their lawlessness, no matter how violent their disputes become.

*Id.*

50. Neither the original Senate bill, S. 1126, 1 NLRB, LEGISLATIVE HISTORY OF THE LMRA, *supra* note 41 at 111-12, nor the amended House bill, H.R. 3020, as passed by the Senate, 1 NLRB, LEGISLATIVE HISTORY OF THE LMRA, *supra* note 41 at 279-80, contained a provision similar to § 302(e) of the original House bill. *See supra* note 46.

51. 1 NLRB, LEGISLATIVE HISTORY OF THE LMRA, *supra* note 41 at 111-13, 239, 241-42.

52. National Labor Relations Act § 10(h); 29 U.S.C. § 160(h) (1976) expressly exempts unfair labor practices from the NLA and reads:

(h) When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the act entitled An Act to amend the Judicial Code and to de-

ever, "no provision of the Senate version would have permitted the issuance of an injunction in a labor dispute at the suit of a private party."<sup>53</sup>

The conference committee accepted the Senate version of the bill which eliminated section 302(e) of the House bill.<sup>54</sup> The committee also rejected the amendment to the Senate version which made the violation of a collective bargaining agreement an unfair labor practice. Instead, the conferees believed suits for breach of such agreements should remain entirely private and "be left to the usual processes of the law."<sup>55</sup>

It seems quite evident that in 1947 Congress refused to adopt a broad "political motivation" exception to the Norris-La Guardia Act or to deem breaches of collective bargaining agreements unfair labor practices.<sup>56</sup> The acts must nevertheless be accommodated to each other. It is this process that the Supreme Court has dealt with through case law analysis.

#### IV. CASE LAW BACKGROUND

In 1960, the Court decided three cases, known as the steel-

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fine and limit the jurisdiction of courts sitting in equity, and for other purposes approved March 23, 1932 (U.S.C. Supp. VII, title 29, secs. 101-115) [NLA]

*Id.* See *supra* note 3.

53. *Sinclair Ref. Co. v. Atkinson*, 370 U.S. 195, 207 (1962).

54. See *supra* note 46.

55. *Sinclair Ref. Co. v. Atkinson*, 370 U.S. 195, 207 (1962). Citing, H.R. CONF. REP. No. 510, 80th Cong. 1st Sess. 41-42 (1947), reprinted in 1 NLRB, LEGISLATIVE HISTORY OF THE LMRA, *supra* note 41 at 546. The report reads in pertinent part:

The Senate amendment contained a provision which does not appear in section 8 of existing law. This provision would have made it an unfair labor practice to violate the terms of a collective bargaining agreement or an agreement to submit a labor dispute to arbitration. The conference agreement omits this provision of the Senate amendment. Once parties have made a collective bargaining contract the enforcement of that contract should be left to the usual processes of the law and not to the National Labor Relations Board.

*Id.*

56. This is the same conclusion that the Supreme Court reached in *Jacksonville Bulk Terminals*, 102 S. Ct. at 2684 (1982). The Court after reaching this conclusion continued: [I]nstead if a strike of this nature takes the form of a secondary boycott prohibited by § 8(b) (of the LMRA), Congress chose to give the [National Labor Relations] Board, not private parties, the power to petition a federal district court for an injunction. See 29 U.S.C. § 160 (K), 160 (L), *Cf.* *International Longshoremen's Ass'n v. Allied International Inc.*, 102 S. Ct. 1656 (1982). 102 S. Ct. at 2684.

worker's trilogy,<sup>57</sup> which established the importance and favorability of the arbitration process. However, in *Sinclair Refining Co. v. Atkinson*,<sup>58</sup> the Court retreated from this position, or at least failed to advance the policy, when it ruled that an injunction to enjoin a strike could not be issued even if the strike constituted a breach of a collective bargaining agreement.<sup>59</sup> The majority, refusing to accommodate section 4 of the NLA with section 301 of the LMRA, declined to compel specific performance of the "bargained for" no-strike clause. Instead, most of the Court's analysis centered on whether section 301 of the LMRA impliedly repealed section 4 of the NLA.<sup>60</sup>

The real significance of the *Sinclair* decision, however, lay in the dissent. Justice Brennan recognized that accommodation of the two provisions was imperative, particularly where the dispute fell within the arbitration scheme of a collective agreement.<sup>61</sup> Justice Brennan neither lost sight of the important role that the NLA plays in labor policy, nor did he contend that the "jurisdictional grant to federal courts in section 301 to enforce collective bargaining agreements was broader than the jurisdictional denial to federal courts in *Norris-La Guardia* to enjoin labor disputes."<sup>62</sup>

In order to accommodate the anti-injunction policies of the NLA with the purposes of section 301 of the LMRA, Justice Brennan

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57. See *supra* note 9. In *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 582-83 (1960), the Court noted:

[a]n order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage.

*Id.* at 582-83.

58. 370 U.S. 195 (1962).

59. *Id.* at 209. The union had signed an agreement which contained a no-strike clause "for any cause which is or may be the subject of a grievance." The union then proceeded to strike over grievances which could have been submitted to arbitration. The district court dismissed the complaint. This action was affirmed by the Seventh Circuit Court of Appeals which felt the case, as a labor dispute, fell within the purview of *Norris-La Guardia*. *Id.* at 197-200.

60. See *supra* notes 26-55 and accompanying text.

61. 370 U.S. 195, 216-217. Justice Brennan noted:

But the enjoining of a strike over an arbitrable grievance may be indispensable to the effective enforcement of an arbitration scheme in a collective agreement; thus the power to grant that injunctive remedy may be essential to the uncrippled performance of the Court's function under § 301.

*Id.* at 216-17 (footnote omitted).

62. See *Sinclair Ref. Co. v. Atkinson*, 370 U.S. 195, 225 (1962). Justice Brennan noted:

[T]here is no general federal anti-strike policy; and although a suit may be brought under § 301 against strikes which, while they are breaches of private contracts, do not threaten any additional public policy, in such cases the anti-injunction policy of *Norris-La Guardia* should prevail.

*Id.* at 225.

would allow the issuance of an injunction when the federal courts found that four requirements were fulfilled: 1.) injunctive relief must be appropriate despite the NLA; 2.) the strike or work stoppage must entail a grievance which both parties are contractually bound to arbitrate under a collective bargaining agreement; 3.) conditional upon the issuance of an injunction the employer must submit the grievance to arbitration; and 4.) the district court must determine if the injunction would be warranted under ordinary principles of equity.<sup>63</sup>

There were two distinct reasons why the Supreme Court felt that the *Sinclair* decision should be reconsidered. First, the decision was an extreme departure from the Court's prior emphasis and the established congressional policy, favoring the peaceful settlement of labor disputes through arbitration.<sup>64</sup> Second, the practical effect of *Sinclair*, when read in conjunction with the prior decision of the Court in *Avco Corp. v. Aero Lodge No. 735*,<sup>65</sup> was to "oust state courts of jurisdiction in section 301(a) suits where injunctive relief [was] sought for breach of a no-strike obligation."<sup>66</sup>

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63. Since Justice Brennan's passage is relied upon by the Court to establish the *Boys Markets* exception, it is reproduced in full:

A District Court entertaining an action under § 301 may not grant injunctive relief against concerted activity unless and until it decides that the case is one in which an injunction would be appropriate despite the Norris-La Guardia Act. When a strike is sought to be enjoined because it is over a grievance which both parties are contractually bound to arbitrate, the District Court may issue no injunctive order until it first holds that the contract *does* have that effect, and the employer should be ordered to arbitrate, as a condition of his obtaining an injunction against the strike. Beyond this, the District Court must, of course, consider whether issuance of an injunction would be warranted under ordinary principles of equity — whether breaches are occurring and will continue, or have been threatened and will be committed; whether they have caused or will cause irreparable injury to the employer; and whether the employer will suffer more from the denial of an injunction than will the union from its issuance.

370 U.S. 195, 228 (1962) (emphasis in original).

64. See *Boys Markets, Inc. v. Retail Clerks Union, Local 770*, 398 U.S. 235, 241 (1970); See also *supra* note 56 and accompanying text.

65. 390 U.S. 557 (1968). The Court held that unions could remove state court suits brought under § 301(a) of the LMRA to federal court pursuant to the federal question removal jurisdiction enunciated in 28 U.S.C. § 1441 (1976). Once the suit was removed, the unions obtained the advantage of the *Sinclair* decision, and any injunctive relief would be dissolved by the federal court.

66. See *Boys Markets, Inc. v. Retail Clerks Union, Local 770*, 398 U.S. 235, 244-45; Note, *Buffalo Forge Co. v. United Steel Workers: The Supreme Court Sanctions Sympathy Strikes*, 25 CLEV. ST. L. REV. 435, 439 (1976).

The chance for reconsideration came in *Boys Markets*.<sup>67</sup> The Court, in overruling *Sinclair*, held that where the controversy concerned a matter which the parties had agreed to arbitrate, federal courts could enjoin work stoppages and require arbitration of the dispute.<sup>68</sup> The district courts, in their determinations of whether or not to grant injunctive relief, were instructed to follow the principles enumerated in Justice Brennan's dissent in *Sinclair*.<sup>69</sup>

The Court not only specifically recognized that *Boys Markets* was a "narrow" exception, but also that the decision in no way "undermine[d] the vitality of the Norris-La Guardia Act."<sup>70</sup> The Court continued:

We deal only with the situation in which a collective-bargaining contract contains a mandatory grievance adjustment or arbitration procedure. Nor does it follow from what we have said that injunctive relief is appropriate as a matter of course in every case of a strike over an arbitrable grievance.<sup>71</sup>

The purpose of a *Boys Markets* injunction is not to compel specific performance of some substantive provision of a collective bargaining agreement. The NLA explicitly prohibits such relief. Rather, the purpose is to protect and promote the arbitration process by enforcing the union's bargained for pledge to arbitrate instead of strike over the substantive issue. It necessarily "follows that there can be no *Boys Markets* exception to Norris-LaGuardia unless the dispute over which the union is striking is one that it has agreed to submit to arbitration."<sup>72</sup>

Because the courts of appeals were divided on the issue of whether a grievance which the union had not agreed to arbitrate was joinable,<sup>73</sup> the Supreme Court reestablished the appropri-

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67. 398 U.S. 235 (1970). The parties' collective bargaining agreement provided that all controversies concerning the interpretation of the agreement would be resolved through the arbitration process. The agreement also contained a no-strike clause. The union picketed over an interpretation of the contract which clearly fell within the ambit of the arbitration agreement.

68. 398 U.S. 235, 254. The only injunction at issue in this case, and also in *Sinclair*, *Buffalo Forge*, and *Jacksonville Bulk Terminals*, was one granted prior to arbitration. It has been consistently recognized that once the arbitrator has ruled, federal courts may enforce his decision without the prohibitions of the Norris-La Guardia Act. See Brief for Respondents at 14, *Jacksonville Bulk Terminals v. International Longshoremen's Ass'n*, 102 S. Ct. 2673 (1982). *Buffalo Forge Co. v. United Steelworkers of America*, 428 U.S. 397, 405 (1976); *United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960).

69. 398 U.S. 235, 254; See *supra* note 62.

70. 398 U.S. at 253-54.

71. *Id.*

72. Brief for Respondent at 15, *Jacksonville Bulk Terminals, Inc. v. International Longshoremen's Ass'n*, 102 S. Ct. 2673 (1982) (emphasis in original).

73. The Second, Fifth, and Sixth Circuits held that no injunction could issue unless the underlying dispute fell within the arbitration clause. The Third, Fourth, and Eighth Circuits believed that even if the underlying dispute was not arbitra-

ateness of the NLA ban on injunctions in *Buffalo Forge Co. v. United Steelworkers*.<sup>74</sup> The prayer for injunctive relief arose when the United Steelworkers, honoring a sister union's picket lines, engaged in a work stoppage. The Steelworkers' employment contract contained a no-strike clause as well as arbitration provisions for settling disputes which concerned the interpretation or application of the contract.<sup>75</sup>

The Court held that an injunction could not be issued to enjoin the sympathy strike pending an arbitrator's determination of whether the strike violated the express no-strike clause contained in the collective bargaining agreement. The majority held that *Boys Markets* did not control the sympathy strike situation because the underlying dispute was nonarbitrable.<sup>76</sup> Furthermore, the rationale behind the granting of a *Boys Markets* injunction was absent because the sister union's controversy was not subject to the Steelworkers' settlement procedures, thus the employer was not deprived of anything for which he had bargained.<sup>77</sup>

The Court also recognized a second dispute engendered by the first—whether the union work stoppage, in response to the nonarbitrable dispute, violated the no-strike provision of the collective bargaining agreement. Concededly, this issue was arbitrable and the employer would be entitled to an order requiring the union to arbitrate. However, under the prohibitions of section 4(a) of the NLA,<sup>78</sup> the district court is not empowered to enjoin the strike pending the decision of the arbitrator.<sup>79</sup>

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ble, the issue of a violation of the no-strike clause was an arbitrable difference which permitted the issuance of an injunction under the *Boys Markets* rationale. *Buffalo Forge Co. v. United Steelworkers of America*, 428 U.S. 397, 404 n.9 (1976).

74. 428 U.S. 397 (1976).

75. *Id.* at 399-400.

76. Justice White, writing for the majority noted:

*Boys Markets* plainly does not control this case. The District Court found, and it is not now disputed, that the strike was not *over* any dispute between the Union and the employer that was even remotely subject to the arbitration provisions of the contract. The strike at issue was a sympathy strike in support of sister unions negotiating with the employer. . . . The strike had neither the purpose nor the effect of denying or evading an obligation to arbitrate or of depriving the employer of its bargain.

428 U.S. at 407, 408 (footnote omitted).

77. *Id.*

78. See *supra* note 3.

79. *Buffalo Forge Co. v. United Steelworkers of America*, 428 U.S. 397, 410, 411 (1976). Justice White noted:

If an injunction could issue against the strike in this case, so in proper circumstances could a court enjoin any other alleged breach of contract



In summary, the *Boys Markets* exception allows a pre-arbitration injunction because the union has elected to strike over, rather than arbitrate, a matter which is explicitly contained in the collective-bargaining agreement. In situations synonymous to that in *Buffalo Forge*, the dispute precipitating the strike is not whether the no-strike clause is being violated but rather some detached issue which is not encompassed by the collective bargaining agreement. In this respect, the dispute is not over an arbitrable issue and this falls outside the ambient of the *Boys Markets* exception.<sup>80</sup>

The question which was left open after *Buffalo Forge* was the extent to which the Court would determine that specific types of work stoppages were not arbitrable. Employers realized that sympathy strikes, unless contained in the collective bargaining agreements' arbitration provisions, were not enjoined under section 301 of the LMRA. They were to become aware that work stoppages motivated by political goals were also not enjoined in federal court.

## V. THE MAJORITY OPINION

Justice Marshall, writing for the majority, initially noted that in specific situations, exceptions to the NLA's broad anti-injunction provisions have been recognized.<sup>81</sup> For instance, in *Boys Markets* it became necessary to accommodate section 301(a) of the LMRA to the anti-injunction policies of Norris-La Guardia.<sup>82</sup> This accommodation, to specific federal legislation or established congress-

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pending the exhaustion of the applicable grievance and arbitration provisions even though the injunction would otherwise violate one of the express prohibitions of section 4 [of the Norris-La Guardia Act].

*Id.* at 410.

80. Consequently, after *Buffalo Forge*, the courts of appeals have been unanimous in holding that, where the underlying dispute over which the union is striking is not arbitrable, a preliminary injunction may not be granted prior to arbitration of the issue of whether the no-strike clause has been violated. Brief for Respondent at 17, n.17, *Jacksonville Bulk Terminals, Inc. v. International Longshoremen's Ass'n*, 102 S. Ct. 2673 (1982). *Waller Brothers Stone Co. v. United Steelworkers, AFL-CIO*, 620 F.2d 132 (6th Cir. 1980); *Jacksonville Maritime Ass'n, Inc. v. International Longshoremen's Ass'n, AFL-CIO*, 571 F.2d 319, 325 (5th Cir. 1978); *J.A. Jones Constr. Co. v. Plumbers and Pipefitters Local 598*, 568 F.2d 1292, 1295 (9th Cir. 1978); *NLRB v. C.K. Smith & Co.*, 569 F.2d 162, 169 (1st Cir. 1977); *Corporate Printing Co. v. New York Tel. Union Number 6*, 555 F.2d 18, 20 (2d Cir. 1977); *Cedar Coal Co. v. United Mineworkers*, 560 F.2d 1153, 1169 (4th Cir. 1977); *National Rejectors Indus. v. United Steelworkers of America*, 562 F.2d 1069, 1075 (8th Cir. 1977); *Latrobe Steel Co. v. United Steelworkers*, 545 F.2d 1336, 1341 (3rd Cir. 1976); *NLRB v. Keller-Crescent Co.*, 538 F.2d 1291, 1295 (7th Cir. 1976).

81. See *supra* note 39 and accompanying text; *Boys Markets, Inc. v. Retail Clerks Union*, 398 U.S. 235, 249-53 (1970); *Brotherhood of Railroad Trainmen v. Chicago River and Indiana R. Co.*, 353 U.S. 30, 39-42 (1957).

82. 398 U.S. at 244-55.

sional policy, determines the situations where the NLA does not apply, and federal courts may enjoin union activity. However, as Justice Marshall pointed out, where the union activity entails a dispute which is not arbitrable, the need to accommodate the two acts becomes evanescent.<sup>83</sup> Union activity, strike, boycott, or work stoppage, so long as it is called over a non-arbitrable dispute, does not directly frustrate the arbitration process. Unlike the situation in *Boys Markets*, such activity is not an attempt to evade the obligation to arbitrate grievances mentioned in the collective bargaining agreement.<sup>84</sup>

The first issue addressed by the majority<sup>85</sup> was whether the work stoppage could be defined as a "case involving or growing

83. 102 S. Ct. at 2686.

84. 102 S. Ct. at 2679 n.8 (1982); see *Buffalo Forge Co. v. United Steelworkers*, 428 U.S. 397, 407-12 (1976).

85. Neither the majority nor the dissent dealt with two specific issues which were advanced in the Circuit Court of Appeals. The first issue was whether the case had become moot since the union employees had returned to work and loaded the Norwegian vessels. The Supreme Court does give this problem cursory attention:

Although the work stoppage is no longer in effect, there remains a live controversy over whether the collective bargaining agreement prohibits politically motivated work stoppages, and the Union may resume such a work stoppage at any time. As a result, this case is not moot.

102 S. Ct. at 2677 n.1. See *Buffalo Forge Co. v. United Steelworkers*, 428 U.S. 397, 403 n.8 (1976).

However, the Fifth Circuit addressed the problem more fully by maintaining several lines of analysis. If it is probable that similar cases will arise in the same fashion in the future and the underlying dispute will, as a result of similar occurrences, evade judicial review, there is sufficient case law to satisfy the constitutional requirement. *Roe v. Wade*, 410 U.S. 113 (1973); *Southern Pacific Terminal Co. v. ICC*, 219 U.S. 498 (1911). However, if the case is not presented as a class action, mootness can be avoided only if the challenged action is in duration too short to be litigated fully prior to its cessation or expiration and there is a reasonable expectation that the same complaining party would again be subjected to the same action. *Weinstein v. Bradford*, 423 U.S. 147, 149 (1975); *Sosna v. Iowa*, 419 U.S. 393 (1975).

The second issue which the Supreme Court did not directly address in Jacksonville Bulk Terminal was the first amendment argument made by the ILA in the Fifth Circuit. The Fifth Circuit maintained:

The agreement that the injunction against the refusal to work ships is a "prior restraint" on speech does not withstand analysis. Neither President Gleason [of the ILA] nor any other ILA officer or member is enjoined from speaking. They are enjoined simply from continuing a work stoppage. . . .

*Id.* at 463. It should be noted, however, that the Supreme Court in a case decided in April of 1982 did address this specific issue. That case also arose out of the ILA's response to the Soviet invasion of Afghanistan. See *International Longshoremen's Ass'n v. Allied Int'l Inc.*, 102 S. Ct. 1656, 1664-65 (1982).

out of [a] labor dispute” within the meaning of section 4 of the NLA.<sup>86</sup> “Labor dispute” is defined in Section 13(c) of the Act as including “any controversy concerning terms or conditions of employment.”<sup>87</sup> In most situations, however, where an employer brings suit to enforce a no-strike provision of a collective bargaining agreement, there are two controversies involved. First, the “underlying dispute” which precipitated the strike or work stoppage, and second, whether the work stoppage violates the no-strike agreement between the parties.<sup>88</sup> It is this second controversy—whether the union may refuse to perform certain work under the collective bargaining agreement—that gives rise to federal court jurisdiction under section 301 of the LMRA.<sup>89</sup> “[I]t is beyond [objection] that [the] second form of dispute . . . is a ‘controversy concerning the terms or conditions of employment’ [within the explicit language of section 13(c) of the Norris-La Guardia Act].”<sup>90</sup>

The employer, however, argued that the political motivation behind the work stoppage removed this case from the broad definition of “labor disputes.” The Court initially established that the specific language of the Act makes no exception for labor disputes which are politically motivated<sup>91</sup> and then continued:

Nor is there any basis in the statutory language for the argument that the Act requires that *each* dispute relevant to the case be a labor dispute. The Act merely requires that the case involve ‘any’ labor dispute. Therefore, the plain terms of § 4(a) and § 13 of the Norris-La Guardia Act deprives the federal courts of the power to enjoin the Union’s work stoppage in this § 301 action, without regard to whether the Union also has a non-labor dispute with another entity.<sup>92</sup>

The legislative history of the NLA also supports the conclusion that strikes motivated by political goals are not exempt from the Act’s broad anti-injunction provisions.<sup>93</sup> Even when Congress had the opportunity to repeal the Act with respect to labor disputes having their genesis in the political arena, it refused to do so.<sup>94</sup> That opportunity arose when Congress enacted the LMRA.

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86. See *supra* note 3 for the entire text of the act.

87. 29 U.S.C. § 113(c) (1976); see *supra* note 17 for the entire text.

88. 102 S. Ct. at 2680.

89. Recall that section 301(a) of the LMRA allows federal court jurisdiction in “[s]uits for violation of contracts between an employer and a labor organization.” 29 U.S.C. § 185(a) (1976); See *supra* note 2 for the entire text.

90. 102 S. Ct. at 2680.

91. *Id.*

92. *Id.* (emphasis added).

93. *Id.* at 2682; see also *supra* notes 28-38 and accompanying text; particularly the comments of Representatives Beck and Oliver, *supra* notes 35 and 37.

94. 102 S. Ct. at 2683-84; see also *supra* notes 42-51 and accompanying text, particularly section 2(13) of the original House version of the LMRA, H.R. 3020, 80th Cong., 1st Sess. § 2(13) (1947), reprinted in 1, NLRB, LEGISLATIVE HISTORY OF THE LABOR MANAGEMENT RELATIONS ACT, *supra* note 41, at 168.

The Court concluded that neither the statutory language nor the legislative history of the two Acts exempted the type of labor dispute involved, from the anti-injunction provisions of Norris-La Guardia.<sup>95</sup> This being the case, it remained to be determined whether their inclusion would be inconsistent with prior case law interpreting the Act.

It has traditionally been the policy of the Court to interpret the NLA broadly,<sup>96</sup> since Congress "was intent upon taking the federal courts out of labor injunction business."<sup>97</sup> Second, the Supreme Court, in *Columbia River Packers Association v. Hinton*,<sup>98</sup> maintained that a critical element in determining the applicability of the NLA was whether the controversy involved an employer-employee relationship.<sup>99</sup> The Court, in *Jacksonville Bulk Terminals*, recognized that the employer and the union were the disputants and the controversy involved the collective bargaining agreement into which they entered.<sup>100</sup> Thus, the critical element that the employer-employee relationship be the matrix of the controversy was satisfied.<sup>101</sup>

The employer advanced the argument that "a 'labor dispute' exists only when the union's action is taken in its own economic

95. 102 S. Ct. at 2687, 2680-81.

96. *Marine Cooks & Stewards v. Panama SS Co.*, 362 U.S. 365, 369 (1960). "This congressional purpose . . . was prompted by a desire to protect the rights of laboring men to organize and bargain collectively and to withdraw federal courts from a type of controversy for which many believed they were ill-suited and from participation in which, it was feared, judicial prestige might suffer." *Id.* at 369 n.7.

97. 315 U.S. 143 (1942).

98. *Id.* at 146-47. The Court used the following language:

We recognized that by the terms of the statute there may be a "labor dispute" where the disputants do not stand in the proximate relation of employer and employee. But the statutory classification, however broad, of parties and circumstances to which a "labor dispute" may relate does not expand the application of the [Norris-La Guardia] Act to include controversies upon which the employer-employee relationship has no bearing.

*Id.*

99. 102 S. Ct. at 2681.

100. In delineating the relationship requirements, the Court suggests:

A labor dispute might be present under the facts of this case even in the absence of the dispute over the scope of the no-strike clause. Regardless of the political nature of the union's objections to handling Soviet-bound cargo, these objections were expressed in a work stoppage by employees against their employer, which focused on particular work assignments. Thus apart from the collective-bargaining agreement, the employer-employee relationship would be the matrix of the controversy.

*Id.* at 2681 n.12.

101. *Id.* at 2681.

self-interest.”<sup>102</sup> The Court not only rejected this argument as having no support in prior case law,<sup>103</sup> but also suggested that it had been well established that “terms or conditions of employment” entails something broader than wages, hours, unionization or betterment of working conditions.<sup>104</sup> The Court took specific notice of the fact that the NLA “does not concern itself with the background or motives of the dispute.”<sup>105</sup>

In sum, the *Jacksonville Bulk Terminals* Court held that the NLA did not exempt politically motivated work stoppages, either in specific statutory language or historical analysis, from its broad anti-injunction language. Furthermore, prior decisions of federal courts established that the anti-injunction policies should apply to politically motivated strikes.<sup>106</sup> In any case, the dispute concerning the extent and possible violation of the no-strike agreement is definitely a “labor dispute” within the meaning of *Norris-La Guardia* and, absent exemption from the Act, an injunction

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102. *Id.* The employer's reliance was based on several cases. *American Fed'n of Musicians v. Carroll*, 391 U.S. 99 (1968); *Columbia River Packers Ass'n v. Hinton*, 315 U.S. 143 (1942); *Bakery Drivers Union v. Wagshal*, 333 U.S. 437 (1948). These cases, however, were concerned with the different issue of whether a “labor group” existed for the purposes of anti-trust laws. These cases did not establish that a “labor dispute” must entail purely economic motives, 102 S. Ct. at 2681 n.3.

103. See 29 U.S.C. § 113(c) (1976), *supra* note 33.

104. 102 S. Ct. at 2682. The Court pointed out that if the employer's economic motive argument were given credence, strikes in protest of unreasonably unsafe conditions and many sympathy strikes would fall outside the ambient of “labor disputes.” *Id.* at 2682 n.14; see also *Buffalo Forge Co. v. United Steelworkers of America*, 428 U.S. 397 (1976) (Federal Court prohibited from issuing injunction against sympathy strike in support of a sister union because sympathy strike was not an arbitrable grievance and hence not within *Boys Markets* exception to NLA); *New Negro Alliance v. Sanitary Grocery Co.*, 303 U.S. 552 (1938) (picketing by association of blacks because of store's hiring policies constitutes labor dispute within provisions of NLA).

105. 102 S. Ct. at 2682 (quoting *New Negro Alliance v. Sanitary Grocery Co.*, 303 U.S. 552, 561 (1938); see *supra* note 39 and accompanying text.

106. See *United States Steel Corp. v. United Mine Workers*, 519 F.2d 1236 (5th Cir. 1975), *rehearing denied*, 526 F.2d 376 (5th Cir.), *cert. denied*, 428 U.S. 910 (1976); see *supra* note 22; *Armco Steel Corp. v. United Mine Workers*, 505 F.2d 1129 (4th Cir. 1974), *cert. denied*, 423 U.S. 877 (1975) (where union's grievance which precipitated strike concerned state and federal regulations on allocation, distribution and sale of gasoline).

In addition, reference may be made to the following cases which, like the *Jacksonville Bulk Terminals* case, arose out of the ILA's response to the Soviet invasion of Afghanistan: *Hampton Roads Shippings Ass'n v. International Longshoremen's Ass'n*, 631 F.2d 282 (4th Cir. 1980); *New Orleans Steamship Ass'n v. General Longshore Workers, International Longshoremen's Ass'n*, 468 F. Supp. 409 (1980) (consolidated with *Jacksonville Bulk Terminals, Inc. v. International Longshoremen's Ass'n*, 626 F.2d 455 (5th Cir. 1980); *John W. McGrath Corp. v. Atlantic Coast District, International Longshoremen's Ass'n*, 80-CV-150 (N.D.N.Y. Mar 6, 1980) (This unreported opinion is reproduced as an Appendix to Brief for Respondents, *Jacksonville Bulk Terminals, Inc. v. International Longshoremen's Ass'n*, 102 S. Ct. 2673 (1982)).

cannot be issued prior to an arbitration finding.<sup>107</sup>

With this established, the Court faced the issue of whether or not the boycott could still be enjoined under the rationale of *Boys Markets*.<sup>108</sup> The Court took notice that:

The rationale of *Buffalo Forge* compels the conclusion that the Union's work stoppage, called to protest the invasion of Afghanistan by the Soviet Union, may not be enjoined pending the arbitrator's decision on whether the work stoppage violates the no-strike clause in the collective bargaining agreement. The underlying dispute, whether viewed as an expression of the Union's "moral outrage" at Soviet military policy or as an expression of sympathy for the people of Afghanistan, is plainly not arbitrable under the collective-bargaining agreement.<sup>109</sup>

The underlying dispute, the controversy which precipitated the work stoppage, is not arbitrable and, therefore, does not directly frustrate the arbitration process. The issue of whether the boycott violates the no-strike agreement is an issue which an arbitrator, not the federal courts,<sup>110</sup> should resolve.<sup>111</sup>

#### VI. THE DISSENTING OPINIONS

Chief Justice Burger, writing in dissent, felt that as a political dispute, the controversy in this case had no relation to a "controversy concerning terms or conditions of employment. . . ." <sup>112</sup> He relied on two cases for the proposition that federal courts had

107. See *supra* note 3.

108. See *supra* notes 56-71 and accompanying text for a complete discussion of the *Boys Markets* exception. Note also that for the employer to advance this argument he had to discard his prior argument that the dispute was purely political, and argue alternatively that the dispute is enjoinable because it is arbitrable under the collective bargaining agreement. 102 S. Ct. at 2685.

109. 102 S. Ct. at 2685.

110. The Court in *Buffalo Forge Co. v. United Steelworkers of America*, 428 U.S. 397 (1976) noted:

It is incredible to believe that the courts would always view the facts and the contract as the arbitrator would; and it is difficult to believe that the arbitrator would not be heavily influenced or wholly preempted by judicial views of the facts . . . . Injunctions very often permanently settle the issue; and in other contexts time and expense would be discouraging factors to the losing party in court in considering whether to relitigate . . . before the arbitrator.

*Id.* at 412.

111. Justice O'Connor writing a separate concurring opinion states: "[N]o injunction may issue pending arbitration because, the underlying political dispute is not arbitrable under the collective bargaining agreement. Unless the Court is willing to overrule *Buffalo Forge*, the conclusion reached by the Court in this case is inescapable." 102 S. Ct. at 2687.

112. *Id.* at 2687 (Burger, C.J., dissenting) (quoting § 13(c) of the Norris-LaGuardia Act); see *supra* note 17 for the full text of the Norris-LaGuardia Act § 13(c), 29 U.S.C. § 113(c) (1976).

consistently recognized the applicability of the NLA only to economic disputes.<sup>113</sup> The first case, *Khedival Line, S.A.E. v. Seafarers International Union*<sup>114</sup> was not initiated under the auspices of section 301 of the LMRA. Rather, a foreign shipowner sought to enjoin the picketing union by invoking the court's admiralty jurisdiction.<sup>115</sup> The second case relied upon by the Chief Justice, *West Gulf Maritime Association v. International Longshoremen's Association*,<sup>116</sup> was expressly renounced by the Fifth Circuit Court of Appeals in its *Jacksonville Bulk Terminals* decision.<sup>117</sup> The Fifth Circuit has adhered to the rationale of *United States Steel Corp. v. United Mine Workers*,<sup>118</sup> finding it more persuasive. Furthermore, *West Gulf Maritime Association* has been thoroughly discredited by the *Buffalo Forge* opinion.<sup>119</sup> In short, the cases which Chief Justice Burger relied upon are not "on point."

The Chief Justice also suggested that if Congress had intended to bar the federal courts from issuing injunctions in political disputes, the definition of a "labor dispute" in section 13(c) of the NLA would not be limited to "terms or conditions of employment."<sup>120</sup> However, this argument does not seem to withstand an analysis of the legislative history of the Act.<sup>121</sup> Chief Justice Burger advocated that the reason Congress refused to amend the LMRA in 1947 to exempt politically motivated disputes from the NLA<sup>122</sup> was because the amendments were too broad in scope.<sup>123</sup> However, if Congress had intended for the LMRA to limit section 4 of the NLA it could have done so. Instead, all such amendments were deleted from the final version of the LMRA.<sup>124</sup>

Finally, the Chief Justice, finding no way to reconcile the major-

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113. 102 S. Ct. at 2688 n.3 (Burger, C.J., dissenting).

114. 278 F.2d 49 (2d Cir. 1960). See *supra* notes 25-38 and accompanying text.

115. *Id.* at 50-51. The main distinction in the case is that the suit was not brought by the employer, but by a foreign shipowner. See Brief for Respondents at 12-13, *Jacksonville Bulk Terminals, Inc. v. International Longshoremen's Ass'n*, 102 S. Ct. 2673 (1982).

116. 413 F. Supp. 372 (S.D. Tex. 1975), *aff'd summarily*, 531 F.2d 574 (5th Cir. 1976).

117. 626 F.2d 455, 464-65 (1980); see *supra* note 22 and accompanying text.

118. 519 F.2d 1236 (5th Cir. 1975), *rehearing denied*, 526 F.2d 376 (5th Cir. 1976), *cert. denied*, 428 U.S. 910 (1976) (finding strike to achieve a political goal a labor dispute within the meaning of the NLA).

119. *Buffalo Forge Co. v. United Steelworkers*, 428 U.S. 397 (1976); see *supra* notes 72-78 and accompanying text.

120. 102 S. Ct. at 2687 (Burger, C.J., dissenting); see also *supra* note 17 (narrow definition of term "labor dispute" was offered as an amendment in the Senate and rejected).

121. See *supra* notes 33-39 and accompanying text.

122. See *supra* notes 44-55 and accompanying text discussing Congress' refusal to adopt broad political motivation exception to the NLA.

123. 102 S. Ct. at 2688 n.4 (Burger, C.J., dissenting).

124. See *supra* notes 54-55.

ity opinion with *International Longshoremen's Association v. Allied International, Inc.*,<sup>125</sup> suggested that *Buffalo Forge* be overruled.<sup>126</sup> *Allied International* arose out of the same nucleus of facts as did the *Jacksonville Bulk Terminals* case, which was the International Longshoremen's Association's protest over the Soviet invasion of Afghanistan. In *Allied International*, the Court held that the union's refusal to unload wood products from the Soviet Union was a secondary boycott in violation of section 8(b)(4) of the National Labor Relations Act (Taft-Hartley).<sup>127</sup> The Union was therefore liable for damages under section 303 of the LMRA.<sup>128</sup> It must be remembered, however, that *Allied International* was not brought under section 301 of the LMRA.<sup>129</sup>

The *Jacksonville Bulk Terminals* case is quite similar to the Fifth Circuit case of *United States Steel Corp. v. United Mine Workers of America*.<sup>130</sup> Although an injunction may not be issued under a section 301 suit, the employer is not precluded from pursuing other possible remedies. *Jacksonville Bulk Terminals, Inc.* may still initiate a suit under section 303 of the LMRA and, upon a showing of unfair labor practices in violation of the secondary boycott proscriptions of section 8(b)(4) of the LMRA, recover damages.<sup>131</sup>

Justice Powell<sup>132</sup> felt that the *Buffalo Forge* decision was an

125. 102 S. Ct. 1656 (1982).

126. 102 S. Ct. at 2689 (Burger, C.J., dissenting).

127. 102 S. Ct. at 1663. The violation of the National Labor Relations Act § 8(b)(4), 29 U.S.C. § 158(b)(4) (1976), was resultant of the facts that the union's activity was considered "in commerce" and a secondary boycott. *Id.* at 1662-63. The Court refused to apply a political boycott exception to the secondary boycott provision. *Id.* at 1664.

128. Labor Management Relations Act § 303 (1976), 29 U.S.C. § 187 (1976), provides in pertinent part:

(a) It shall be unlawful, for the purpose of this section only, in an industry or activity affecting commerce, for any labor organization to engage in any activity or conduct defined as an unfair labor practice in section 158(b)(4) of this title. (b) Whoever shall be injured in his business or property by reason (of) any violation of subsection (a) of this section may sue therefore in any district court of the United States . . . and shall recover the damages by him sustained and the cost of the suit.

*Id.*

129. *See supra* note 55.

130. 519 F.2d 1236 (5th Cir. 1975), *rehearing denied*, 526 F.2d 376 (5th Cir. 1976), *cert. denied*, 428 U.S. 910 (1976). *See supra* note 22.

131. *Id.* at 1247 n.23.

132. Justice Powell concurred in Chief Justice Burger's dissent and also wrote a separate dissent. Justice Powell also wrote the majority opinion in the *Allied Int'l.* case.



"aberration" and should be overruled.<sup>133</sup> He maintained that dividing the dispute into two separate controversies was contradictory. On the one hand, the boycott must be characterized as a labor dispute involving the scope of the no-strike clause in order to bring the dispute within the breadth of the NLA. But on the other hand, *Buffalo Forge* requires the finding that the dispute is really over Soviet aggression and therefore not arbitrable.<sup>134</sup> The majority opinion, however, found that the politically motivated work stoppage was a "labor dispute" within the meaning of the NLA.<sup>135</sup> *Buffalo Forge* does not require a change in this finding, it simply requires that the controversy, i.e., the labor dispute, politically motivated or not, be arbitrable.<sup>136</sup>

Justice Stevens concurred with the dissent of the Chief Justice to the extent his analysis did not include the *Allied International* decision. He also dissented for reasons advanced by him in the *Buffalo Forge* case.<sup>137</sup> His dissent in that case analyzed the legislative history of the LMRA.<sup>138</sup> The majority in *Jacksonville Bulk Terminals* found that Congress rejected any type of political exemption from the NLA when the LMRA was enacted.<sup>139</sup>

## VII. IMPACT

The *Jacksonville Bulk Terminals* decision was a tremendous victory for organized labor. The decision not only reestablished support for the *Buffalo Forge* decision, but also broadened the contemporary interpretation of section 4 of the NLA. In this regard, political motivation does not exempt the federal judiciary from adherence to the broad anti-injunction provisions of the Act.

The work stoppage in *Jacksonville Bulk Terminals* was precipitated by political factors which were quite extensive. An extremely large organized union, the International Longshoremen's Association, decided en masse to protest the aggression of the Soviet Union. It will be interesting to note how closely the decision is followed under more narrow factual situations.

The employer is left in the precarious position of possessing a

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133. 102 S. Ct. at 2690 (Powell, J., dissenting).

134. *Id.*

135. *Id.* at 2680.

136. See *supra* notes 72-78 and accompanying text.

137. *Buffalo Forge Co. v. United Steelworkers of America*, 428 U.S. 397, 420-21 (1976) (Stevens, J., dissenting) (federal court may enjoin sympathy strike which violates no-strike clause).

138. Essential to this case with regard to the legislative history was the fact that Congress placed importance on making collective bargaining agreements equally binding and enforceable on both parties.

139. 102 S. Ct. at 2983. An amendment that would have allowed federal courts to enjoin strikes called for ulterior motive was defeated. 75 CONG. REC. 5507 (1932).

bargained for, unequivocal no-strike clause (a clause for which he gave something in exchange) which is practically useless when he tries to enjoin strike activity. The clause does become important when the employer attempts to obtain damages under section 303 of the LMRA.

Under a situation where the underlying dispute is neither arbitrable nor contemplated by the parties when they established their collective bargaining agreement, federal courts may not issue injunctions. This much is clear from *Jacksonville Bulk Terminals*. To hold otherwise would usurp the arbitrator's authority, authority which was given to him by the parties through their own agreement. If federal courts were allowed to freely issue injunctions in all situations in which they felt the union employees were at fault, or in violation of the no-strike agreement, organized labor would soon occupy the position it did before the Norris-La Guardia Act.

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