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Labor Law -- Norris-LaGuardia Act -- Arbitration Agreements -- Federal Courts May Enjoin Strikes in Breach of No-Strike Agreements -- Boys Markets, Inc. v. Retail Clerks Unions, Local 770

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CASE NOTE

Labor Law—Norris-LaGuardia Act—Arbitration Agreements—Federal Courts May Enjoin Strikes in Breach of No-Strike Agreements.—*Boys Markets, Inc. v. Retail Clerks Unions, Local 770.*[1]—In the recent decision of *Boys Markets Inc. v. Retail Clerk's Union Local 770,* the Supreme Court re-examined and expressly overruled the holding of *Sinclair Refining Co. v. Atkinson.*[2] *Boys Markets* involved a controversy arising out of an employer's use of non-union help to pack a frozen food container despite union demands that the case be emptied and repacked by union labor. Both parties were bound by a collective bargaining agreement which contained, *inter alia,* provisions for grievance hearings, arbitration, and a no-strike clause, with the decision of the arbitrator binding upon the parties. Subsequent to the employer's refusal to permit union members to empty the food cases the union called a strike and began picketing his establishment.

The following day, the employer obtained a temporary restraining order from the California Superior Court forbidding continuation of the strike. The union removed the case to the Federal District Court for the Central District of California in an attempt to quash the injunction. The district court enjoined the union from striking and ordered the parties to arbitration. The Court of Appeals for the Ninth Circuit reversed this order on the grounds that the prohibitions against federal injunctive relief expressed in *Sinclair* were controlling.[3] The Supreme Court granted certiorari, and HELD:[4] The Norris-LaGuardia Act does not bar the granting of injunctive relief for strikes in breach of a no-strike obligation in a collective bargaining contract which contains provisions for mandatory grievance adjustment or arbitration procedure.

The request for federal injunctive relief in *Boys Markets* was based upon Section 301(a) of the Labor-Management Relations Act which provides:

> 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.[5]

Section 301(a) was enacted to open the federal courts to suits for violations of collective bargaining agreements and thereby facilitate

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1 398 U.S. 235 (1970).
2 370 U.S. 195 (1962).
3 416 F.2d 368, 370 (9th Cir. 1969).
4 398 U.S. at 253.
5 29 U.S.C. § 185(a) (1964).

enforcement of such contracts by removing the statutory requirement of a minimum amount in controversy or diversity of citizenship.[6] The accompanying provisions in section 301(b)[7] enlarged this grant of jurisdiction by removing some of the procedural disabilities blocking suits against unions in state courts. Labor organizations, as unincorporated associations, had proven themselves procedurally immune from suit in several states, whereas employers, if incorporated, were easily sued.[8] This imposition of contractual liability upon labor unions by section 301(b) supports an interpretation of section 301(a) as merely a jurisdictional statute providing a federal forum for suits involving collective bargaining agreements.[9] However, the basically jurisdictional function of section 301(a) has supported a much broader scope of federal labor law. The result of this initial grant of federal jurisdiction has been the gradual development of a uniform body of substantive federal labor policy.[10]

In *Textile Workers Union of America v. Lincoln Mills*,[11] the Supreme Court expressly held for the first time that suits under section 301 would be governed by federal law.[12] In *Lincoln Mills*, the Court upheld a district court order requiring an employer to comply with the arbitration provisions in a collective bargaining agreement. Moreover, the Court specifically rejected the contention that section 301 was a merely jurisdictional statute, and held that the section authorized the federal courts to fashion a body of federal law for the enforcement of collective bargaining agreements.[13] This initial expansion of the role

[6] The significant legislative history of § 301(a) is contained in an appendix to Mr. Justice Frankfurter's dissenting opinion in Textile Workers Union of America v. Lincoln Mills, 353 U.S. 448, 485-86 (1957). See also 93 Cong. Rec. 3839 (1947) (remarks of Senator Taft), and Justice Traynor's comments in McCarroll v. Los Angles County Dist. Council of Carpenters, 49 Cal. App.2d 45, 315 P.2d 322 (1957).

[7] 29 U.S.C. § 185(b) (1964). This section provides in part that any "labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States."

[8] 93 Cong. Rec. 3839 (1947).

[9] The interpretation that state court jurisdiction should not be pre-empted by § 301(a) was first stated by Senator Ferguson on the senate floor in 1946:

> (MR. FERGUSON.) Mr. President, there is nothing whatever in the now-being-considered amendment which takes away from the State courts all the present rights of the State courts to adjudicate the rights between parties in relation to labor agreements. The amendment merely says that the Federal courts shall have jurisdiction. It does not attempt to take away the jurisdiction of the State courts, and the mere fact that the Senator and I disagree does not change the effect of the amendment.
>
> (MR. MURRAY.) But it authorizes the employers to bring suit in the Federal courts, if they so desire.
>
> (MR. FERGUSON.) That is correct. That is all it does. It takes away no jurisdiction of the State courts. 92 Cong. Rec. 5708 (1946), cited in 398 U.S. at 245.

[10] Note, The Federal Common Law, 82 Harv. L. Rev. 1512, 1532 (1969).

[11] 353 U.S. 448 (1957).

[12] Id. at 456.

[13] Id. at 451. The Court adopted the reasoning set forth in the opinion of Judge Wyzanski in Textile Workers Union of America v. American Thread Co., 113 F. Supp.

of federal law in section 301 suits was upheld by judicial recognition of the importance of a federal labor policy favoring arbitration as the approved method of settling labor disputes.[14]

Paralleling the development of substantive federal labor law, however, was a trend in Supreme Court decisions indicating that divisions between state and federal jurisdiction must still be recognized in section 301 suits. In *Charles Dowd Box Co. v. Courtney*,[15] the Court affirmed a state court judgment awarding damages for an employer's breach of a collective bargaining agreement. It was held that section 301 was not meant to allow the federal courts to displace completely state jurisdiction of suits for violations of labor-management contracts.[16] This recognition of the importance of state disposition of labor disputes was reemphasized in *Teamsters Local 174 v. Lucas Flour Co.*,[17] which affirmed the interpretation that section 301 does not deprive state courts of jurisdiction over litigation involving collective bargaining contracts, and upheld a state court judgment awarding damages for breach of a no-strike provision.[18] It was further decided, however, that while the states may still retain jurisdiction in section 301 suits, they must apply federal substantive law in the disposition of these actions.[19]

The limitation upon federal intervention in section 301 suits was further extended by renewed emphasis of the anti-injunction provisions of Section 4 of the Norris-LaGuardia Act.[20] In *Sinclair Refining Co. v. Atkinson*,[21] a suit was brought by an employer in federal district court under section 301 to enjoin a strike allegedly in violation of a no-strike clause. The Supreme Court held that the controversy was a "labor dispute" within the terms of Section 13(c) of the Norris-LaGuardia Act,[22] and that federal courts were therefore prohibited from enjoining the strike. In affirming dismissal of the suit, the Court in *Sinclair* expressly held that actions arising under section 301 pre-

137 (D. Mass. 1953). In that case, Judge Wyzanski stated that "[s]ection 301 is drafted in terms which appear to be exclusively jurisdictional. The statute does not expressly state what law shall be applied to determine the rights of the parties or their remedies. . . . It is a direction to develop a federal common law in connection with the rights of the parties." 113 F. Supp. at 139.

14 See, e.g., United Steelworkers of America v. American Mfg. Co., 363 U.S. 564 (1960); United Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960); United Steelworkers of America v. Enterprise Wheel & Car Corp., 363 U.S. 593 (1960).

15 368 U.S. 502 (1962).

16 Id. at 511.

17 369 U.S. 95 (1962).

18 Id. at 101.

19 Id. at 102.

20 29 U.S.C. § 104 (1964).

21 370 U.S. 195 (1962).

22 The term "labor dispute" includes any controversy 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. 29 U.S.C. § 113(c) (1964).

sented no conflict with the anti-injunction proscriptions of the Norris-LaGuardia Act.[23]

Although the *Sinclair* decision specifically prohibited federal injunctive relief in section 301 suits, it left open the question of whether state court actions under section 301 were removable to federal courts. In *Avco Corp. v. Aero Lodge 735*,[24] a state court had enjoined a strike in violation of a no-strike agreement. The union then removed the case to federal district court as an action "arising under the laws of the United States" within the meaning of the removal statute.[25] The district court asserted jurisdiction in the case and dissolved the state injunction. The Supreme Court in *Avco* upheld this action of the district court, noting that suits arising under section 301 were properly removable.[26]

The Court in *Boys Markets* viewed the combined effect of *Sinclair* and *Avco* as virtually displacing state jurisdiction in section 301 suits since the option of removal and dissolution of state injunctions was made available.[27] More importantly, the prohibition in *Sinclair* against injunctive relief in section 301 suits in federal courts was held contrary to the federal policy of enforcing agreements to settle labor disputes peacefully.[28] The reversal of *Sinclair* was thus considered the necessary means of avoiding both an unwarranted ouster of state jurisdiction and frustration of an important segment of national labor policy. However, as the Court in *Boys Markets* recognized, reversal of *Sinclair* and subsequent approval of federal injunctive relief in section 301 suits must be reconciled with the direct language of Section 4 of the Norris-LaGuardia Act, which expressly forbids the granting of an injunction in a "labor dispute" by a federal court.[29]

The majority in *Boys Markets* reasoned that federal injunctive relief in section 301 suits could be granted through a process of accommodation with the anti-injunction policies of the Norris-LaGuardia Act. The Court first examined the legislative history of section 301 to attempt to support reconciliation with the Norris-LaGuardia Act. The drafters of section 301 were aware of the inequities in existing statutory coverage of labor problems. At the time of the passage of section 301, however, Congress failed to repeal or amend the provisions of the Norris-LaGuardia Act.[30] This congressional failure to alter the Norris-LaGuardia Act in response to the increased federal jurisdictional grant in section 301 has been interpreted as conclusive evidence that

[23] 370 U.S. at 203.

[24] 390 U.S. 557 (1968).

[25] 28 U.S.C. § 1441(b) (1964).

[26] 390 U.S. at 560.

[27] 398 U.S. at 244-45. See General Electric Co. v. Local Union 191, 413 F.2d 964 (5th Cir. 1969), and Day-Brite Lighting Division v. International Bhd. of Elec. Workers, 303 F. Supp. 1086 (E.D. Miss. 1969) for additional examples of the dissolution of state injunctions by federal courts in § 301 suits.

[28] 398 U.S. at 249.

[29] Id. at 249-50.

[30] 93 Cong. Rec. 6445-446 (1947) (remarks of Senator Taft).

Congress intended the anti-injunction provisions of Norris-LaGuardia to remain rigidly in force despite the passage of section 301.[81]

Nevertheless, the majority in *Boys Markets* stressed that the effect of these anti-injunction provisions must be considered in the context of labor practices at the time of their adoption. Prior to 1932, Congress viewed the reaction of federal judges to labor disputes as being guided by the conservative anti-labor attitude of the federal judiciary.[82] The Norris-LaGuardia Act attacked this judicial practice by declaring federal courts improper agencies to formulate substantive labor policy, and repudiated the federal common law of labor relations by establishing a policy of government neutrality.[83] The legislative history of the Norris-LaGuardia Act thus indicates that Congress believed that courts were ill-suited to make policy in labor matters.[84] After 1932, however, Congress became more disposed toward regulation of employer-union relations by assigning extensive adjudicatory and enforcement responsibilities to the federal courts.[85] This shift of emphasis from the protection of the nascent labor movement to the peaceful settlement of labor disputes created situations requiring the federal courts to issue injunctions in order to effectuate the purposes of the newer administrative statutes.

In addition to the altered relationship between the federal courts and the labor movement, the Court in *Boys Market* noted that the type of labor controversies with which the Norris-LaGuardia Act was framed to deal has changed significantly. The Norris-LaGuardia Act was enacted at a time when the only labor disputes contemplated were "battles of industrial warfare," as opposed to the present day controversies concerning the terms and administration of collective bargaining agreements.[86] As a practical matter, to apply prohibition against judicial interference in raw labor controversies to strikes in breach of collective bargaining agreements is contrary to the intended effective enforcement of such agreements.[87] While the Court in *Boys Markets* held that strikes involving collective bargaining agreements are "labor disputes" within the terms of the Norris-LaGuardia Act,[88] this type of dispute was seen as sufficiently distinct from earlier controversies to support modification of the present day effect of the Norris-LaGuardia Act.

The Court in *Sinclair* had earlier considered and rejected both the

[81] 370 U.S. at 205.

[82] 75 Cong. Rec. 5463 (1932) (remarks of Representative O'Connor).

[83] 75 Cong. Rec. 4915 (1932) (remarks of Senator Wagner).

[84] See the remarks of Representative O'Connor, supra note 32.

[85] Three primary examples of this increased federal regulation are the amendments to the Railway Labor Act of 1934, 45 U.S.C. §§ 151-63 (1964); the National Labor Relations Act of 1935, 29 U.S.C. § 151 et. seq. (1964); and the Taft-Hartley Act of 1947, 29 U.S.C. § 141 et. seq. (1964).

[86] Comment, Labor Arbitration and Anti-Injunction: The Case for Accommodation, 10 B.C. Ind. & Com. L. Rev. 898, 901 (1969).

[87] Steward, No-Strike Clause in the Federal Courts, 59 Mich. L. Rev. 673, 678 (1961).

[88] Supra note 22.

arguments of the changed role of the judiciary in labor disputes and the evolution of a different type of labor controversy as grounds for modification of the anti-injunction policies of the Norris-LaGuardia Act.[39] The *Sinclair* decision held that the correct interpretation of the Norris-LaGuardia Act required strict adherence to the plain language of the Act without consideration of changed circumstances in its application.[40] The Court in *Boys Markets* disagreed and held that full consideration must be given to the total corpus of federal labor law that has developed since passage of the Norris-LaGuardia Act.[41] Furthermore, the majority in *Boys Markets* stressed that the relevant policies expressed in the Act must be adapted to changing circumstances, and not be conclusively limited by a narrow interpretation of the language of the Act itself.[42] This divergence of views concerning the interpretation of labor legislation is the crux of the distinction between the rationales expressed in *Sinclair* and *Boys Markets*. Full discussion of the opposing schools of thought concerning strict statutory construction and more liberal interpretation that have so frequently divided the Supreme Court is beyond the scope of this note. However, interpretation of labor legislation in particular, because it involves an area sensitive to change, would seem to require accommodation with changing practices in labor-management relations if the policies of the legislation are to be effectuated.

This liberalized interpretation of labor statutes expressed in *Boys Markets* is supported by prior judicial reconciliation of existing statutes with laws added to the developing framework of federal labor law. The first effective accommodation of the Norris-LaGuardia Act to a newer statute involved the Railway Labor Act,[43] which provided for administrative disposition of collective bargaining problems in the railroad industry.[44] The Supreme Court in *Graham v. Brotherhood of Firemen*[45] upheld an injunction barring compliance with a racially discriminatory collective bargaining agreement. The Court reasoned that the otherwise absolute anti-injunction provisions of the Norris-LaGuardia Act did not deprive federal courts of jurisdiction to enforce the positive mandates of the Railway Labor Act. This limited use of injunctive relief was soon expanded in *Brotherhood of R.R. Trainmen v. Chicago River & R.R.*[46] In *Chicago River*, the Supreme Court affirmed the issuance of an injunction to restrain a union from striking while a dispute was pending before the National Railroad Adjustment

[39] 370 U.S. at 201-02.

[40] Id. at 202.

[41] 398 U.S. at 250.

[42] Id.

[43] 45 U.S.C. §§ 151-63, 181-88 (1964).

[44] For a comprehensive discussion of the Act see Risher, The Railway Labor Act, 12 B.C. Ind. & Com. L. Rev. 51 (1970).

[45] 338 U.S. 232 (1949).

[46] 353 U.S. 30 (1957). The propriety of the *Chicago River* accommodation of the Railway Labor Act to the Norris-LaGuardia Act was recently reaffirmed in Seaboard World Airlines, Inc. v. Transportation Workers, 62 CCH Lab. Cas. 10,759 (2d Cir. 1970).

Board (NRAB). The Court reasoned that the Norris-LaGuardia Act and the Railway Labor Act were to be considered as integrated elements of a "pattern of labor legislation."[47] The two statutes were therefore reconciled in the Court's holding that the anti-injunction policy of the Norris-LaGuardia Act was not meant to frustrate the function of the NRAB as a reasonable alternative to self-help. Furthermore, protection of the jurisdiction of the NRAB was recognized as essential to the policy of promoting stable industrial relations.[48]

The majority in *Boys Markets* adopted this accommodation approach used in *Chicago River* as a basis for its holding that federal injunctive relief could issue to enforce no-strike clauses in collective bargaining agreements without violating the Norris-LaGuardia Act.[49] However, the situation presented in *Chicago River* is distinguishable from that found in *Boys Markets* in that the former case involved the enforcement of a statutorily established arbitration procedure,[50] while the latter concerned a contractually established agreement to arbitrate. This distinction was overcome in *Boys Markets* by equating the present day congressional emphasis upon the settlement of labor disputes through arbitration with the express statutory mandate to arbitrate relied upon in *Chicago River*.[51] This analogy is supported by language in the *Chicago River* decision itself which stressed congressional endeavors to stabilize relations as additional grounds for ordering arbitration.[52] While not strict precedent, therefore, the *Chicago River* decision does properly support the accommodation process applied in *Boys Markets*.

Strong policy considerations prompted the Court in *Boys Markets* to reach a decision requiring such difficult reconciliation with the language of the Norris-LaGuardia Act. One major objective of the Court was to encourage uniformity in national labor policy.[53] The Court noted that Congress had specifically intended in enacting section 301(a) that the "doctrine of federal labor law uniformity" should take precedence over contrary state law.[54] The Court viewed the combined effect of *Sinclair* and *Avco* as frustrating the policy of uniformity by making the availability of injunctive relief dependent upon the court chosen.[55] *Sinclair* was therefore overturned partly because it led to a forum-shopping situation that was contrary to the announced federal policy of uniformity.[56]

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47 353 U.S. at 30.

48 See Comment, Labor Injunctions and Judge-Made Labor Law: The Contemporary Role of Norris-LaGuardia, 70 Yale L.J. 78, 81-82 (1960).

49 398 U.S. at 251.

50 45 U.S.C. § 152 (1964).

51 398 U.S. at 252.

52 353 U.S. at 40.

53 398 U.S. at 241.

54 369 U.S. at 104.

55 398 U.S. at 244-45.

56 This forum-shopping situation is accentuated by the fact that only 14 states have provisions similar to the Norris-LaGuardia Act prohibition against injunctive relief. 398 U.S. 247-48 n.15.

Uniformity in labor law has been firmly established as a desired objective by the federal courts.[57] However, there is considerable disagreement as to the methods to be used in reaching this goal. Some commentators have emphasized the necessity for uniformity in section 301 suits, but have advocated the full extension of the *Sinclair* holding to state courts as the means to achieve this result.[58] Such further application of *Sinclair* was recognized by the Court in *Boys Markets* as a possible means of achieving uniformity, but this extension of the anti-injunction holding in *Sinclair* was rejected because to so hold would hinder the strong federal policy of supporting the use of arbitration as the approved method of resolving labor disputes.[59]

Arbitration has received congressional approval as the most desirable method of promoting the peaceful settlement of labor disputes.[60] The Supreme Court has emphasized this congressional policy in a series of decisions beginning with *Lincoln Mills*.[61] Later decisions involving the application of section 301 have noted that the "arbitral process" is closely connected with national labor policy as a whole,[62] and that arbitration of grievances is an essential element in promoting the federal policy of industrial stabilization.[63] Moreover, the Court has stressed the importance of the proper functioning of the arbitration process by limiting judicial review of arbitration awards to avoid undermining the policy of settling disputes through arbitration.[64]

While there is little disagreement as to the importance of arbitration as a national labor policy, there are sharply divergent views as to the necessity for injunctive relief to enforce arbitration clauses. The Court in *Boys Markets* saw the availability of equitable remedies as being necessary to avoid "devastating implications for the enforceability of arbitration agreements."[65] However, it has been suggested that the need for enforcement of arbitration agreements is met by legal remedies presently available to employers such as disciplinary actions against employees and suits for damages caused by illegal strikes.[66] Yet, the effectiveness of this type of remedy, as is pointed out by the

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[57] See San Diego Bldg. Trades Council v. Garmon, 359 U.S. 236, 242-43 (1959), and Guss v. Utah Labor Relations Bd., 353 U.S. 1, 10-11 (1957). See generally Keene, The Supreme Court, Section 301 and No-Strike Clauses: From Lincoln Mills to Avco and Beyond, 15 Vill. L. Rev. 32, (1969).

[58] Bartosic, Injunctions and Section 301: The Patchwork of Avco and Philadelphia Marine on the Fabric of National Labor Policy, 69 Colum. L. Rev. 980, 995 (1969).

[59] 398 U.S. at 247.

[60] S. Rep. No. 105, 80th Cong., 1st Sess. 17-18 (1947), cited by Justice Frankfurter in his dissenting opinion in *Lincoln Mills*, 353 U.S. at 529.

[61] 353 U.S. at 455.

[62] See United Steelworkers of America v. American Mfg. Co., 363 U.S. 564, 572 (1960) (concurring opinion).

[63] See United Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574, 578 (1960).

[64] See United Steelworkers of America v. Enterprise Wheel & Car Corp., 363 U.S. 593, 596 (1960).

[65] 398 U.S. at 247.

[66] Dunau, Three Problems in Labor Arbitration, 55 Va. L. Rev. 427, 465 (1969).

majority in *Boys Markets*,[67] appears to be inferior to ending an illegal strike by injunction. While, disciplining employees and actions for damages are alternatives to injunctive relief, both methods are themselves often subject to arbitration. Hence, quick disposition of these matters is delayed by the arbitral process itself and adequate, immediate relief is often impossible.[68]

More telling criticism of the use of injunctive relief in section 301 suits centers upon the appropriateness of the injunction itself as a method of enforcing arbitration agreements. Opponents of the use of injunctions in this area contend that most illegal strikes occur over issues that are not in themselves proper subjects of arbitration, creating a situation in which injunctive relief would help little toward settlement of the dispute.[69] Further, despite widespread use of grievance and arbitration procedures, most strikes do not specifically violate the no-strike clause that may be in effect.[70] Issuance of an injunction when it is unclear whether the strike is violative of a no-strike clause may destroy the employees' contractually unrestricted right to strike,[71] and may be determinative of the outcome of the dispute.[72] Also, judicial resolution of a labor dispute has been criticized as being inconsistent with the concept of self-regulation inherent in the arbitration process.[73] Interference by the courts has been viewed as being opposed to the voluntariness which is essential to effective arbitration procedure.[74]

Judicial experience with court orders enforcing arbitrators' desist orders and awards, however, indicates that injunctive relief would be a workable remedy in section 301 disputes.[75] In *Philadelphia Marine Trade Ass'n v. International Longshoremen's Ass'n, Local 1291*,[76] a union refused to comply with an arbitrator's interpretation of a provision in the contract in dispute. In response to the employer's petition for injunctive relief, the district court issued a decree requiring that the previously issued arbitrator's award be specifically enforced

[67] 398 U.S. at 248.

[68] Spelfogel, Enforcement of No-Strike Clause by Injunction, Damage Actions and Discipline, 7 B.C. Ind. & Com. L. Rev. 239, 252-54 (1966). For an example of delays possible in damage suits as an alternative to injunctive relief see Drake Bakeries, Inc. v. Bakery Workers, 370 U.S. 254 (1962).

[69] Dunau, supra note 66, at 465.

[70] U.S. Department of Labor, Major Collective Bargaining Agreements: Grievance Procedures, BLS 1425-6 (1966).

[71] Aaron, Labor Injunctions in the State Courts-Part II: A Critique, 50 Va. L. Rev. 1147, 1157-158 (1964).

[72] See Construction Laborers v. Curry, 371 U.S. 542, 550 (1963).

[73] Shulman, Reason, Contract And Law In Labor Relations, 68 Harv. L. Rev. 999, 1024 (1955).

[74] Dunau, supra note 66, at 467.

[75] See Ruppert v. Egelhofer, 3 N.Y.2d 576, 148 N.E.2d 129 (1958), and Pacific Marine Ass'n v. International Longshoremen's and Warehousemen's Union, 304 F. Supp. 1315 (N.D. Cal. 1969), as examples of judicial enforcement of arbitrators' cease and desist orders.

[76] 365 F.2d 295 (3d Cir. 1966), rev'd on other grounds, 389 U.S. 64 (1967).

against the union. In upholding this decree,[77] the Court of Appeals for the Third Circuit implicitly affirmed a negative order against the strike. Such enforcement of an arbitrator's award was recognized in *New Orleans Steamship Ass'n v. General Longshore Workers*[78] as being grounded upon the established policy of enforcing arbitration agreements. The court in *New Orleans*, in enforcing an arbitrator's order against a strike in breach of a no-strike clause, reasoned that failure to enforce this type of contractual agreement would render arbitration agreements conditioned upon no-strike clauses ineffectual and "hollow."[79]

This necessity for enforcing cease and desist orders to preserve the vitality of arbitration agreements applies with equal force to breaches of those agreements unaccompanied by arbitrator's orders. There is little functional difference between the injunctive enforcement of a no-strike provision which expressly allows for a cease and desist order, and an affirmative court order enforcing an arbitrator's decision to terminate a strike. As the Court in *Boys Markets* noted, both methods of enforcement follow the contractual approach of enforcing obligations freely undertaken by the parties to a collective bargaining agreement.[80] Because of this functional similarity, the successful judicial experience in enforcing cease and desist orders lends support to the use of injunctive relief to enforce effectively arbitration agreements.

The decision to allow federal injunctive relief to enforce contractual agreements to arbitrate was carefully conditioned by the Court in *Boys Markets* to preserve the bargaining position of the parties involved. The Court expressly adopted the guidelines suggested in the dissenting opinion in *Sinclair*[81] in an effort to limit judicial interference with the terms of the collective bargaining agreement in dispute. This explicit narrowness of the holding in *Boys Markets* has led to thorough consideration of equitable guidelines in recent district court decisions involving requests for injunctive relief in actions brought

[77] Id. at 299-300.

[78] 389 F.2d 369 (5th Cir.), cert. denied, 393 U.S. 828 (1968).

[79] Id. at 372.

[80] 398 U.S. at 252-53.

[81] The *Sinclair* Court stated:

> 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-LaGuardia 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. at 228, cited in 398 U.S. at 254.

under section 301. In *Holland Construction Co., Inc. v. Operating Eng'rs, Local 101*,[82] a state court issued a temporary restraining order forbidding picketing by the defendant union in breach of a no-strike clause. The union removed the case to a federal district court and sought dissolution of the injunction. The district court denied this request, and affirmed the injunction on the condition that the order contain the requirement established in *Boys Markets* that the employer be ordered to arbitrate.[83] Similar concern for equitable safeguards in application of the *Boys Markets* decision was demonstrated in *Stroehmann Bros. Co. v. Local 427*.[84] In *Stroehmann*, the employer moved for a preliminary injunction in district court against the defendant union for alleged violation of a no-strike clause in a collective bargaining agreement. The court noted that the *Boys Markets* opinion had expressly adopted the guideline in the *Sinclair* dissent requiring that a contract be specifically enforceable against both the union and the employer before injunctive relief will issue.[85] The *Stroehmann* court then examined the arbitration agreement in dispute and found that by its provisions only the union was compelled to arbitrate grievances.[86] The court then denied injunctive relief since specific enforceability against both parties, as required by *Boys Markets*, was not present.[87] These lower court interpretations indicate that the narrow use of injunctive relief proscribed in *Boys Markets* is both an effective and equitable means of enforcement of arbitration agreements.

In conclusion, it is submitted that while the decision in *Boys Markets* does reconcile the Norris-LaGuardia Act with injunctive relief in section 301 disputes, it does not totally remove section 301 controversies from anti-injunction coverage. The *Boys Markets* decision applies only to situations involving collective bargaining contracts which contain mandatory grievance or arbitration provisions. This specific type of controversy appears sufficiently insulated from the judicial abuses toward which the Norris-LaGuardia Act was directed. The decision thus does not undermine the policies behind the Norris-LaGuardia Act, while it does emphasize and strengthen arbitration as an effective method for the peaceful settlement of labor disputes. Therefore, one effect of the *Boys Markets* decision should be to transform the collective bargaining agreement into a more viable contract, equally binding upon both parties, since no-strike clauses may be enforced by federal injunctive relief. In addition, the method of statutory interpretation utilized by the majority in *Boys Markets* to accommodate Section 4 of the Norris-LaGuardia Act and Section 301 of the Labor Management Relations Act, may serve as a forecast of future labor policy changes. The Court's focus upon the total corpus of federal

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[82] 63 CCH Lab. Cas. 19,455 (1970).
[83] Id. at 19,457.
[84] 74 L.R.R.M. 2957 (1970).
[85] Id. at 2959.
[86] Id. at 2959-960.
[87] Id. at 2960.

labor policy as the area of concern, rather than on the language of a particular statute itself, raises the possibility of further judicial accommodation of other statutes which are not responsive to immediate labor developments. Because labor legislation is an infrequent occurrence in itself, and most labor policy is accumulated through judicial decisions, the *Boys Markets* liberalization of statutory interpretation can be expected to prompt further alterations in federal labor policy.

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