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THE AFFIRMATIVE ROLE OF STATE COURTS TO ENJOIN STRIKES IN BREACH OF COLLECTIVE BARGAINING AGREEMENTS

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In *Sinclair Ref. Co. v. Atkinson*[1] the United States Supreme Court determined that the anti-injunction provisions of the Norris-LaGuardia Act[2] survived the enactment of Section 301 of the Labor Management Relations Act[3] and, therefore, that federal courts remained without jurisdiction to enjoin strikes in violation of labor agreements.

The *Sinclair* case again left open two questions upon which the Court had earlier expressly reserved decision in *Charles Dowd Box Co. v. Courtney*.[4] Those questions are (1) whether or not the reach of the Norris-LaGuardia Act, when taken together with section 301, extends to state courts so as to deprive them of jurisdiction to enjoin strikes in breach of collective bargaining agreements, and (2) assuming that it does not, whether such injunction suits filed in state courts may be removed to federal courts, where the strictures of Norris-LaGuardia will control.

The thesis of this article is that state courts retain their historical jurisdiction to enjoin strikes in violation of labor contracts in suits falling under section 301 and, further, that such suits filed in state courts may not be removed to federal courts.

I. LEGISLATIVE DEVELOPMENT

At the time of enactment of the Labor Management Relations Act in 1947, the enforcement of labor contracts rested solely in the hands of state courts except in cases where federal diversity jurisdiction existed.[5] The Norris-LaGuardia Act prevented federal courts from issuing injunctions in labor disputes,[6] and no federal statute afforded a

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1 370 U.S. 195 (1962).

2 47 Stat. 70 (1932), 29 U.S.C. § 101 (1964).

3 61 Stat. 156 (1947), 29 U.S.C. § 185 (1964).

4 368 U.S. 502 (1962).

5 S. Rep. No. 105, 80th Cong., 1st Sess. 15-18 (1947).

6 For a quotation of part of § 4 of Norris-LaGuardia, see p. 877 infra.

jurisdictional basis for damage claims in federal courts in the absence of diversity of citizenship.[7]

The reservation of all authority in state courts to remedy breaches of labor contracts resulted in an imbalance in the enforcement of such contracts. This imbalance related to the unavailability to employers of relief against unions, for in spite of the general state attitude that damages would be awarded and injunctions granted,[8] unions could not always be sued.[9] The diverse common law rules applicable in the various states presented a procedural rats' nest frequently frustrating all attempts to secure service of process upon and execution of judgment against union associations.[10] Employers, on the other hand, could be sued with ease. The result was, of course, a one-sided justice which, according to the House report supporting the enactment of the Labor Management Relations Act, was believed to be inequitable, not only by employers, but also by seventy-five per cent of the individual union members.[11]

The legislative history of Section 301 of the Labor Management Relations Act[12] clearly supports the proposition that Congress' primary purpose in enacting this statute was to remedy the grotesque imbalance in the availability of judicial relief.[13] There was no attempt and no intent to remove or restrict state jurisdiction. Instead, the doors of the federal courts were opened and service of process upon union associations and execution against their funds was simplified.[14]

The original House bill suggested doing away with the Norris-LaGuardia injunction restrictions in breach of contract suits, but this

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[7] See generally the appendix to Mr. Justice Frankfurter's dissent in Textile Workers v. Lincoln Mills, 353 U.S. 448, 485 (1957), in which is set forth "the entire relevant legislative history of the Taft-Hartley Act and its predecessor, the Case Bill." Id. at 462; see particularly id. at 505-06, 519, 520, 525, 533, 536, 541-42.

[8] Some states have enacted "little Norris-LaGuardia acts." Unlike the federal statute, however, some such state acts do not prohibit injunctions for strikes in violation of collective bargaining agreements. See, e.g., N.Y. Lab. Law § 807(1)(a); C. D. Perry & Sons, Inc. v. Robilotto, 39 Misc. 2d 147, 240 N.Y.S.2d 331 (Sup. Ct. 1963).

[9] S. Rep. No. 105, supra note 5, at 15-17.

[10] Textile Workers v. Lincoln Mills, supra note 7, at 487-88, 490-92, 496, 498-99, 503-04, 514, 530, 532, 534, and cases cited therein (appendix to Mr. Justice Frankfurter's dissent).

[11] H.R. Rep. No. 245, 80th Cong., 1st Sess. 46 (1947).

[12] Section 301 states in part:

> Suits for violation 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.

61 Stat. 156 (1947), 29 U.S.C. § 185 (1964).

[13] S. Rep. No. 105, supra note 5, at 15-17; H.R. Rep. No. 245, supra note 11, at 45-46; S. Min. Rep. No. 245, 80th Cong., 1st Sess. 108-10 (1947).

[14] 61 Stat. 156 (1947), 29 U.S.C. § 185(b)-(d) (1964).

proposal was eliminated in the final bill.[15] While the conference report does not state an affirmative reason for the disposal of this provision, the Supreme Court in *Sinclair* felt that its removal afforded support for the view that Congress did not intend to repeal the provisions of Norris-LaGuardia.[16]

Whatever the congressional attitude toward the granting of injunctions in federal courts, the picture created by the legislative history of section 301 does not depict a Congress restricting the channels of judicial relief and funneling all activity into the federal forum. There were no findings in the majority or the minority reports in either house that a fundamental national interest was being thwarted by state action. Instead, the framers were motivated by the sole concern that the federal courts should be opened to afford relief *where it could not otherwise be found.*[17]

II. Judicial Interpretation

The Supreme Court's interpretation of section 301 in conjunction with the Norris-LaGuardia Act began with the *Textile Workers v. Lincoln Mills*[18] decision in 1957. In that case the Court made two significant determinations: First, that section 301 created an independent federal substantive law which required federal courts to apply federal principles;[19] and second, that the Norris-LaGuardia Act did not prevent federal courts from compelling arbitration if the labor contract so provided.[20]

In 1962 the Supreme Court, in *Charles Dowd Box Co. v. Courtney*,[21] rejected the proposition that section 301 pre-empted state jurisdiction in breach of labor contract suits and held that state jurisdiction and federal jurisdiction are concurrent.[22] In pointing out that principles of national labor legislation did not demand exclusive power in the federal courts to decide the issues, the Court said:

> We start with the premise that nothing in the concept of our federal system prevents state courts from enforcing rights created by federal law. Concurrent jurisdiction has been a common phenomenon in our judicial history, and exclusive federal court jurisdiction over cases arising under federal law has been the exception rather than the rule.[23]

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[15] Compare 61 Stat. 156 (1947), 29 U.S.C. § 185 (1964), with H.R. 3020, 80th Cong., 1st Sess. (1947).

[16] Sinclair Ref. Co. v. Atkinson, supra note 1, at 207-09.

[17] See note 13 supra.

[18] 353 U.S. 448 (1957).

[19] Id. at 456-57.

[20] Id. at 458-59.

[21] Supra note 4.

[22] Id. at 507-09.

[23] Id. at 507-08.

With respect to the contention that the language of section 301 deprived state courts of jurisdiction, the Court referred to the context in which the section was enacted and noted:

> Such a construction of § 301(a) would also disregard the particularized history behind the enactment of that provision of the federal labor law. The legislative history makes clear that the basic purpose of § 301(a) *was not to limit, but to expand*, the availability of forums for the enforcement of contracts made by labor organizations.[24] (Emphasis added.)

Lincoln Mills and *Dowd Box* established fundamental principles applicable to the interpretation of section 301. The subsequent decisions of the Court in *Teamsters' Local v. Lucas Flour Co.*[25] and in *Sinclair* were elaborations on the principles earlier established.

In *Lucas Flour* the Court held that the precise language of the contractual grievance and arbitration procedure in the labor agreement there involved implied a prohibition of strikes, and, therefore, that the union violated the contract by calling a strike. The Court emphasized the problems that might arise from a lack of uniformity between federal and state courts in the interpretation of contract terms, stating:

> The possibility that individual contract terms might have different meanings under state and federal law would inevitably exert a disruptive influence upon both the negotiation and administration of collective agreements.[26]

The Court continued:

> The importance of the area which would be affected by separate systems of substantive law makes the need for a single body of federal law particularly compelling. *The ordering and adjusting of competing interests through a process of free and voluntary collective bargaining is the keystone of the federal scheme to promote industrial peace. State law which frustrates the effort of Congress to stimulate the smooth functioning of that process thus strikes at the very core of federal labor policy.* With due regard to the many factors which bear upon competing state and federal interests in this area, [citations omitted] we cannot but conclude that in enacting § 301 Congress intended doctrines of federal labor law uniformly to prevail over inconsistent local rules.[27] (Emphasis added.)

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[24] Id. at 508-09.
[25] 369 U.S. 95 (1962).
[26] Id. at 103.
[27] Id. at 104.

Therefore, the Court in *Lucas Flour* held that the application of federal principles of substantive law in matters of contract interpretation was required in state court actions falling within the scope of section 301 in order to protect against potential conflicts between federal and state courts and to eliminate state laws that frustrate the promotion of industrial peace.

Sinclair determined that the grant of federal jurisdiction in section 301 did not include jurisdiction to enjoin the breach of a labor contract. In reaching this decision, the Court resolved the apparent conflict between the anti-injunction provisions of the Norris-LaGuardia Act and section 301.[28] Feeling itself circumscribed by what it regarded as a clear expression of congressional intent that Norris-LaGuardia should stand, the Court refused to engage in an "accommodation" of the two statutes, as urged by the dissent.[29] In essence, then, the true import of the *Sinclair* decision concerns the scope of the legislative grant of jurisdiction to the federal courts. In no way did the Court indicate that federal jurisdictional standards apply to the state courts.

III. State Court Jurisdiction

As the Supreme Court's decisions in the cases discussed, particularly *Sinclair*, make abundantly clear, it is the congressional intent that must control the question of whether the state courts retain plenary jurisdiction in breach of contract suits, including jurisdiction to enjoin strikes in violation of labor contracts.

There is absolutely nothing in the *Sinclair* case which undermines the underlying congressional objective of enhancing the enforcement of collective bargaining agreements through section 301. The Court there held only that, while section 301 opened the federal courts to non-injunction actions, it did not at the same time repeal the Norris-LaGuardia Act by granting federal courts jurisdiction in injunction matters. *Sinclair*, thus, did not have the effect of removing any jurisdiction or remedy that had theretofore existed.

It is clear from the face of the Norris-LaGuardia Act that Congress never intended its anti-injunction prohibitions to apply in state courts. It is equally clear from the legislative history of section 301 that Congress did not intend by its enactment, either directly or indirectly, to extend Norris-LaGuardia to the states, or to eliminate or restrict any previously existing state court jurisdiction. In the Senate debates in 1946, Senator Ferguson stated:

> Mr. Ferguson. Mr. President, there is nothing whatever in the now-being-considered amendment which takes away

[28] Sinclair Ref. Co. v. Atkinson, supra note 1, at 196, 216.
[29] Id. at 215.

> 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.
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> 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.[30]

The Supreme Court has already explicitly recognized this clear congressional intent. In the *Dowd Box* case the Court declared:

> The legislative history of the enactment nowhere suggests that, contrary to the clear import of the statutory language, Congress intended in enacting § 301(a) to deprive a party to a collective bargaining contract of the right to seek redress for its violation in an appropriate state tribunal.
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> In considering these provisions of the proposed legislation in 1946, Congress manifested its complete awareness of both the existence and the limitations of state court remedies for violation of collective agreements.
>
> The clear implication of the entire record of the congressional debates in both 1946 and 1947 is that the purpose of conferring jurisdiction upon the federal district courts was not to displace, but to supplement, the thoroughly considered jurisdiction of the courts of the various States over contracts made by labor organizations.
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> . . . [T]he entire tenor of the 1947 legislative history confirms that the purpose of § 301, like its counterpart in the Case bill, was to fill the gaps in the jurisdictional law of some of the States, not to abolish existing state court jurisdiction.[31]

Consequently, if the Norris-LaGuardia Act were to be extended to state courts, the congressional purpose, as recognized by the Supreme Court, would be thoroughly undermined. This would be true whether Norris-LaGuardia was itself extended or whether the Court declared that federal labor policy requires that the act's principles be applied in state courts. Unlike *Sinclair*, the effect would not simply be that prior statutory restrictions on the issuance of injunctions would remain; rather, these restrictions would be drastically extended. Clearly, that

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[30] 92 Cong. Rec. 5708 (1946).

[31] Charles Dowd Box Co. v. Courtney, supra note 4, at 507, 510, 511, 512.

conclusion would work at direct cross purposes with the intent of Congress.

Some commentators urge, however, that uniformity is the "be all and end all" and must prevail over all other considerations.[32] The spectre of alleged conflict between federal and state authorities seems to send these writers into paroxysms of fear. All too frequently, however, the concept of uniformity is applied without thought as to the reasons for its importance, and the nature of the potential conflict and the dangers it may create are not defined. The reason for uniformity in this context is to effectuate the national labor policy of promoting industrial peace through the enforcement of collective bargaining agreements. An examination of the principles which led to the enactment of Norris-LaGuardia shows that these principles have little application in breach of contract cases. That legislation was enacted because of the excessive zeal of federal courts in granting injunctions which impeded strikes, picketing and boycotts by labor unions for the purpose of self-organization and collective bargaining.[33] As was noted in *Lucas Flour*, "The ordering and adjusting of competing interests through a process of free and voluntary collective bargaining is the keystone of the federal scheme to promote industrial peace."[34] The grant of an injunction prior to the bargaining process defeats this purpose; the grant of an injunction to enforce the contract after the process is completed, however, offers the best means of making the bargaining effective. Accordingly, to deprive state courts of their traditional jurisdiction to issue injunctions against strikes in breach of labor contracts, rather than having the effect of promoting industrial peace, would, on the contrary, affirmatively frustrate the achievement of the expressed national objective.[35]

Furthermore, it must be re-emphasized that the primary fear in *Lucas Flour* concerned the danger inherent in state courts reaching opposing views in areas where their jurisdiction overlapped with that of the federal courts.[36] Accordingly, uniformity should not mean that in areas outside the scope of the grant of jurisdiction to the federal courts state courts cannot act. As Justice (now Chief Justice) Traynor of the California Supreme Court observed in *McCarroll v. Los Angeles County Dist. of Carpenters*:

> Finally, there is no invariable requirement, implicit in the federal system, that a state court enforcing a federal right

[32] E.g., Aaron, Strikes in Breach of Collective Agreements: Some Unanswered Questions, 63 Colum. L. Rev. 1027 (1963).

[33] 47 Stat. 70 (1932), 29 U.S.C. § 102 (1964). See also Frankfurter & Greene, The Labor Injunction (1930).

[34] Teamsters Local v. Lucas Flour Co., supra note 25, at 104.

[35] Id. at 104-05.

[36] Ibid.

> must not go beyond the remedies available in a federal court. Uniformity in the determination of the substantive federal right itself is no doubt a necessity, but such uniformity is not threatened because a state court can give a more complete and effective remedy.[37]

The concern expressed in Mr. Justice Brennan's dissent in the *Sinclair* case that injunction suits will be channeled to the state courts and, therefore, that it will be those courts rather than federal courts which will be enunciating federal labor policy, is not well founded. It certainly cannot be assumed that the state courts are either unwilling to apply or incapable of interpreting federal labor policy. Indeed, one wonders why there is any concern on this score in light of Justice Traynor's learned treatment of the issue in the *McCarroll* case. The Supreme Court has also made it clear that, to insure uniformity, it will retain the final word on these issues whether determined initially in the federal courts or in the state courts.[38] In the language of the Court:

> "[D]iversities and conflicts" may occur, no less among the courts of the eleven federal circuits, than among the courts of the several States, as there evolves in this field of labor management relations that body of federal common law of which *Lincoln Mills* spoke. But this not necessarily unhealthy prospect is no more than the usual consequence of the historic acceptance of concurrent state and federal jurisdiction over cases arising under federal law.[39]

To have it otherwise would result in the complete evisceration of the already shrunken body of state authority over labor relations.

These views are fully supported by the *McCarroll* decision:[40] In his remarkable opinion, Justice Traynor perceptively anticipated the Supreme Court's later decisions in *Dowd Box*, *Lucas Flour* and *Sinclair*. He held that neither the Norris-LaGuardia Act nor any other federal labor law deprives the state courts of their jurisdiction in injunction actions against strikes in breach of labor contracts, declaring:

> Section 301 of the Labor Management Relations Act does not embody any policy that requires a state court enforcing rights created by that section to withhold injunctive relief. The principal purpose of section 301 was to facilitate the enforcement of collective bargaining agreements by making unions suable as entities in the federal courts, and

[37] 49 Cal. 2d 45, 64, 315 P.2d 322, 332-33 (1957).

[38] Charles Dowd Box Co. v. Courtney, supra note 4, at 514.

[39] Ibid.

[40] McCarroll v. Los Angeles County Dist. of Carpenters, 49 Cal. 2d 45, 315 P.2d 322 (1957).

> thereby to remedy the one-sided character of existing labor legislation. (See *United Packinghouse Workers v. Wilson & Co.*, (N.D. Ill.), 80 F. Supp. 563, 568.) We would give altogether too ironic a twist to this purpose if we held that the actual effect of the legislation was to abolish in state courts equitable remedies that had been available, and leave an employer in a worse position in respect to the effective enforcement of his contract than he was before the enactment of section 301.[41]

Since *Sinclair*, a well-reasoned decision of the Pennsylvania Supreme Court in *Shaw Elec. Co. v. International Bhd. of Elec. Workers*[42] has also reached the conclusion that the states remain free to enjoin strikes in breach of collective bargaining agreements. In that decision the court relied upon the congressional intent "that suits for breach of such agreements should remain wholly private and 'be left to the usual processes of the law',"[43] which would include state court injunctions. Further, the court was of the opinion that the *Lucas Flour* decision did not go beyond the necessity for uniform application of federal substantive principles in the interpretation of contractual clauses.[44]

IV. Removal

Assuming that state courts retain their jurisdiction to enjoin strikes in breach of collective bargaining agreements, the question remains whether such suits filed in state courts may nevertheless be removed to the federal courts where, of course, the anti-injunction provisions of Norris-LaGuardia will govern. Stated in another manner, in practical effect does the Norris-LaGuardia Act, in conjunction with section 301 and the removal provisions of the federal Judicial Code, achieve indirectly what it does not achieve directly—that is, strip state courts of their traditional right to grant injunctions against strikes in breach of contract?

Section 4 of the Norris-LaGuardia Act provides in part:

> 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:

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[41] Id. at 63-64, 315 P.2d at 332.
[42] 208 A.2d 769 (Pa. 1965).
[43] Id. at 773.
[44] Id. at 774-75.

> (a) Ceasing or refusing to perform any work or to remain in any relation of employment. . . .[45] (Emphasis added.)

Section 1441 of the Judicial Code, relating to removal of actions from state to federal courts, provides:

> (a) Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have *original jurisdiction*, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending. . . .[46] (Emphasis added.)

Precisely then, the issue is whether or not the federal courts, being without "jurisdiction" under the Norris-LaGuardia Act, are therefore without "original jurisdiction" under section 1441 and so must remand such suits to the state courts.

As heretofore noted, the Supreme Court did not reach this question in the *Sinclair* case and specifically reserved decision thereon in *Dowd Box*.[47] The *Sinclair* case does, however, provide support for the proposition that the federal courts must remand such cases. Thus, the majority there held that "the District Court was correct in dismissing Count 3 [for an injunction] of petitioner's complaint for lack of *jurisdiction* under the Norris-LaGuardia Act."[48] And in Mr. Justice Brennan's dissenting opinion, in which Justices Douglas and Harlan joined, it was stated that if Section 4 of the Norris-LaGuardia Act "is to be read literally, removal will not be allowed."[49]

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[45] 47 Stat. 70 (1932), 29 U.S.C. § 104 (1964).

[46] 62 Stat. 937 (1948), 28 U.S.C. § 1441 (1964).

[47] In *Dowd Box* the Court commented on this issue:

> And quite obviously we have not yet considered the various problems concerning removal under 28 U.S.C. § 1441. See *Swift & Co. v. United Packinghouse Workers*, 177 F. Supp. 511; *Fay v. American Cystoscope Makers, Inc.*, 98 F. Supp. 278.

368 U.S. at 514 n.8. The Court's selection of decisions for citation is interesting. In the *Swift* case plaintiff prayed both for damages and an injunction, predicated upon a strike in breach of contract. In considering the very issue here presented, it was held that the cause of action wherein an injunction was requested would be remanded if the complaint were amended so as to state separate causes of action for an injunction and damages. The *Fay* case, on the other hand, considered only § 301 and § 1441 without regard to Norris-LaGuardia. In denying remand, it was there held that, in light of § 301, the defendant could not be compelled to litigate a federal claim in a state court. To the extent that the district court thereby implied that there was not concurrent jurisdiction between state and federal courts in § 301 suits, its rationale is contrary to the subsequent decision of the Supreme Court in *Dowd Box*.

[48] 370 U.S. at 215 (emphasis added).

[49] Id. at 227 and n.21. It is significant that the congressional statement of public policy in the Norris-LaGuardia Act is also expressed in terms of "jurisdiction." Section 2 provides in part:

> In the interpretation of this chapter and in determining the jurisdiction and

The only United States court of appeals decision on this issue since the *Sinclair* case is *American Dredging Co. v. Local 25, Int'l Operating Eng'rs.*[50] In a most thoroughly considered discussion of the question, the Third Circuit held that a suit commenced in a state court to enjoin a strike in breach of a collective bargaining agreement did not fall within section 1441 and, therefore, that the district court erred in denying the motion to remand. While there were several predicates for the decision, the court concluded, in reliance upon substantial decisional authority, that jurisdiction within the meaning of section 1441 means the power to entertain the suit, consider the merits and render a binding decision, and that since the Norris-LaGuardia Act precluded this, the suit should be remanded.[51]

The federal district courts subsequent to *Sinclair* but prior to *American Dredging* reached differing conclusions on this point.[52] In accord with *American Dredging* is *Merchants Refrigerating Co. v. Warehouse Union*;[53] to the contrary is *Tri-Boro Bagel Co. v. Bakery Drivers.*[54]

Certainly, the type of convoluted analysis that would find the existence of "original jurisdiction" under section 1441 in order to turn around and dismiss for lack of "jurisdiction" under the Norris-LaGuardia Act must be rejected as being completely incongruous. Attempts by some to answer this compelling conclusion suggest that even though the plaintiff restricts his prayer to injunctive relief, the federal courts may nevertheless have jurisdiction to grant other relief

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authority of the courts of the United States, as such jurisdiction and authority are defined and limited in this chapter, the public policy of the United States is declared as follows:

. . . . [T]herefore, the following definitions of and limitations upon the jurisdiction and authority of the courts of the United States are enacted.

47 Stat. 70 (1932), 29 U.S.C. § 102 (1964).

[50] 338 F.2d 837 (3rd Cir. 1964), cert. denied, 380 U.S. 935 (1965).

[51] Id. at 840-42.

[52] The great weight of decisions prior to *Sinclair* ordered remand. American Dredging Co. v. Local 25, Int'l Operating Eng'rs, supra note 50, at 839-40 n.8; see, e.g., National Dairy Prods. Corp. v. Heffernan, 195 F. Supp. 153 (E.D.N.Y. 1961).

[53] 213 F. Supp. 177 (N.D. Cal. 1963).

[54] 228 F. Supp. 720 (E.D.N.Y. 1963). Inapposite are H. A. Lott, Inc. v. Hoisting & Portable Eng'rs, 222 F. Supp. 993 (S.D. Tex. 1963), and Crestwood Dairy, Inc. v. Kelley, 222 F. Supp. 614 (E.D.N.Y. 1963), wherein the complaints prayed for both an injunction and damages. Such cases present additional removal problems under § 1441(c) of the Judicial Code which provides:

Whenever a separate and independent claim or cause of action, which would be removable if sued upon alone, is joined with one or more otherwise non-removable claims or causes of action, the entire case may be removed and the district court may determine all issues therein, or, in its discretion, may remand all matters not otherwise within its original jurisdiction.

62 Stat. 937 (1948), 28 U.S.C. § 1441(c) (1964). These additional problems are beyond the scope of this article.

pursuant to Rule 54(c) of the Federal Rules of Civil Procedure.[55] These suggestions, however, overlook the fact that jurisdiction must be determined from the allegations of the complaint. The question is not whether the court has jurisdiction over the case as the plaintiff might have alleged it; rather, the question is whether the court has jurisdiction over the case as plaintiff did allege it.[56] Furthermore, as the court noted in disposing of this contention in *American Dredging*,[57] Rule 82 of the Federal Rules of Civil Procedure prescribes that such rules "shall not be construed to extend or limit the jurisdiction of the United States district courts."[58]

Arguments based upon esoteric, conceptual, or theoretical interpretations of the elusive word "jurisdiction" must not be permitted to obscure the paramount issue: congressional intent. The issue is one of interpretation of federal statutes and, as the Court in *Sinclair* made clear, the intent of Congress must control. As above noted, the Norris-LaGuardia Act deprived the federal courts of jurisdiction in injunction cases involving labor disputes and, absent diversity of citizenship, there was no jurisdiction in the federal courts over other actions for violations of collective bargaining agreements. Thus, it was not until the enactment of section 301 that the federal courts were vested with original jurisdiction in non-injunction suits involving strikes in breach

[55] See Tri-Boro Bagel Co. v. Bakery Drivers, supra note 54, at 721 n.3; Aaron, supra note 32, at 1045-46. Rule 54(c) provides in part:

> Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings.

[56] Merchants Refrigerating Co. v. Warehouse Union, supra note 53, at 178.

[57] 338 F.2d at 848.

[58] In addition to his disregard of the above considerations, the alternative courses of action which Professor Aaron claims are open to the federal court in such cases are highly questionable both on legal and practical grounds. Aaron, supra note 32, at 1045-46. He contends, for example, that "clearly, [the federal court] can order the union to arbitrate the dispute." If by "the dispute" Professor Aaron means the dispute underlying the strike, obviously this alternative affords no "relief" to which the plaintiff is "entitled" on *his* causes of action under rule 54(c). If, on the other hand, Professor Aaron is referring to arbitration of the plaintiff's causes of action, such claims could not be submitted to arbitration where, as is often the case, labor contracts prescribe a one-sided grievance and arbitration procedure available only to the processing of claims against the employer. See the companion case to *Sinclair*, Atkinson v. Sinclair Ref. Co., 370 U.S. 238, 241-45 (1962). Another of Professor Aaron's suggestions is that the court could grant the plaintiff a declaratory judgment that the strike is in breach of contract. While such a remedy—if, indeed, it can be called that—would as a practical matter be a patently hollow one, even that remedy would not be available under a complaint limited to injunctive relief and not containing the allegations necessary to support such a judgment. See Sinclair Ref. Co. v. Atkinson, 290 F.2d 312, 320 (7th Cir. 1961). Finally, as to Professor Aaron's alternative that the court could award damages, the plaintiff would not in any event be "entitled" to "relief" in the form of monetary damages within the meaning of rule 54(c) absent proof of the same, which proof, of course, is not a prerequisite to obtaining an injunction. This is to say nothing of the fact that the forms of "relief" suggested by Professor Aaron are hardly commensurate—either in terms of the employer's interest or our national labor policy—to an order bringing the illegal strike to an end.

of labor agreements.[59] If, therefore, it were to be held that, despite Norris-LaGuardia, the federal courts have "original jurisdiction" of injunction actions within the meaning of section 1441, then it would be section 301 that would prohibit remand. Clearly, however, such a result must be rejected since it would reduce, not enhance, the remedies available to promote industrial peace by the enforcement of collective bargaining agreements and would eliminate the long standing jurisdiction of state courts to grant injunctions in such cases—an effect diametrically opposed to the intent of Congress in enacting section 301.

[59] Another and independent question concerning removal which is beyond the scope of this article is whether a suit to enjoin a strike in breach of contract is "founded on a claim or right arising under the Constitution, treaties or laws of the United States . . ." by virtue of the enactment of § 301. 62 Stat. 937 (1948), 28 U.S.C. § 1441(b) (1964). Conflicting conclusions have been reached on this question. In the *American Dredging* case, one independent ground for the decision was that the action therein was not founded on such a claim or right. 338 F.2d at 843-46. Contra, National Dairy Prods. Corp. v. Heffernan, supra note 52, at 154-55.