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If Coverage of 'No-Strike' Clause Is Only Issue For Arbitrtor, Strike May Not Be Enjoined

In *Buffalo Forge Co. v. Steelworkers of America*,[1] the U.S. Supreme Court held in a 5-4 decision that §4 of the Norris-La Guardia Act[2] prevents a federal court from enjoining a sympathy strike while an arbitrator is deciding whether the strike is covered by a no-strike clause. The Court's decision settled the sole question left unanswered by *Boys Markets, Inc. v. Retail Clerks Union*.[3]

Buffalo Forge's "office clerical-technical" (O&T) employees went on strike in response to problems their unions encountered in negotiations for a collective-bargaining contract. The production and maintenance (P&M) employees of Buffalo Forge, who were represented by respondent United Steelworkers Union, honored the picket lines in support of the unions that represented the O&T employees.

Buffalo Forge, relying on §301(a) of the Labor Management Relations Act,[4] asked the U.S. District Court for a temporary restraining order against the steelworkers and an order directing the union to arbitrate its

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1. ___ U.S. ___, 96 S. Ct. 3141, 49 L. Ed. 2d 1022 (1976).

2. Section 4 of the Norris-LaGuardia Act, 47 Stat. 70 (1932), 29 U.S.C.A. §104 (1965), states:

> 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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> (a) Ceasing or refusing to perform any work or to remain in any relation of employment;
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> . . . .
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> (e) Giving publicity to the existence of or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling or by any other method not involving fraud or violence;
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> (f) Assembling peaceable to act or to organize to act in promotion of their interests in a labor dispute;
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> (g) Advising or notifying any person of an intention to do any of the acts herein specified;
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> (h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and
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> (i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 103 of this title.

3. 398 U.S. 235 (1970).

4. 61 Stat. 156 (1941), 29 U.S.C.A. §185(a) (1965). Section 301(a) provides: "Suits for violation of contracts between an employer and a labor organization . . . 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."

grievances. The district court, citing §4 of the Norris-LaGuardia Act, denied the temporary restraining order because the P&M strike was not over a grievance covered by the arbitration clause in the collective-bargaining agreement,[5] but was instead a sympathy action in support of the striking O&T employees. The district court ruled that whether the union had violated the no-strike clause[6] in its collective-bargaining agreement was an arbitrable issue, but that fact did not justify the issuance of an injunction while the arbitrator was making a decision. The court of appeals held that §4 of the Norris-LaGuardia Act barred the issuance of any injunction by the district court and affirmed the district court's decision.

The conflict between §4 of the Norris-LaGuardia Act, which forbids injunctions, and §301(a) of the Labor Management Relations Act, which grants jurisdiction to enforce collective-bargaining agreements, is a product of the different circumstances under which each law was developed. Before the enactment of the Norris-LaGuardia Act, federal courts issued sweeping decrees on behalf of management to prevent the strengthening of labor unions.[7] To curb the abuse of injunctions on behalf of management and to protect labor's ability to organize and bargain collectively, Congress passed the Norris-LaGuardia Act.[8] Labor unions gained strength as a result, and Congress passed new laws including §301(a) of the Labor Management Relations Act, encouraging collective bargaining. This led to two lines of cases. Some courts have read §4 literally and said it withdraws jurisdiction granted in §301(a),[9] while other courts have refused to read §4 so rigidly and used §301(a) to enforce by means of injunction no-strike clauses in collective-bargaining contracts.

The Supreme Court, in *Textile Workers Union v. Lincoln Mills*,[10] held that Congress intended through §301(a) to place sanctions behind agreements to arbitrate grievances. This decision restored jurisdiction through

5. Section 14.b. of the collective-bargaining agreement provided: "There shall be not strikes, work stoppages or interruption or impeding of work. No Officers or representatives of the Union shall authorize, instigate, aid or condone any such activities. No employee shall participate in any such activity. The Union recognizes its possible liabilities for violation of this provision and will use its influence to see that work stoppages are prevented. Unsuccessful efforts by Union officers or Union representatives to prevent and terminate conduct prohibited by this paragraph, will not be construed as 'aid' or 'condonation' of such conduct and shall not result in any disciplinary actions against the officers, committeemen or stewards involved." *Quoted at* 96 S. Ct. at 3143, 49 L. Ed. 2d at 1026.

6. The district court rejected Buffalo Forge's claim that the strike was over an arbitrable grievance resulting from the specific refusal of P&M truckdrivers to follow a supervisor's insturctions to cross the O&T picket line.

7. *See generally* F. FRANKFURTER & N. GREENE, THE LABOR INJUNCTION (1930) (hereinafter cited as FRANKFURTER & GREENE).

8. *See* Declaration of Public Policy, Norris-LaGuardia Act §4, 47 Stat. 70 (1932).

9. *See* FRANKFURTER & GREENE, *supra* note 7; United States v. Hutcheson, 312 U.S. 219, 235-236 (1941).

10. 353 U.S. 448 (1957).

§301(a) when a party sought specific enforcement of a promise to arbitrate. The textile workers and Lincoln Mills had a collective-bargaining agreement in which the union agreed not to strike and the employer agreed to arbitrate grievances. Grievances later arose and the union requested arbitration, but the employer refused. Speaking for the Court, Justice Douglas said it was not a violation of the anti-injunction provisions of the Norris-LaGuardia Act to compel the employer to arbitrate. Section 301(a) conferred jurisdiction upon the district court to grant the union specific enforcement of the arbitration clause.[11] Although a literal reading of §4 of the Norris-LaGuardia Act might bring the dispute within its terms, the Court found no justification for not applying §301(a). The employer's agreement to arbitrate, the Court emphasized, is an important means toward the voluntary settlement of labor disputes and is the quid pro quo from the employer for the no-strike clause.[12] Since the relief sought was arbitration and not an injunction, there was no §4 problem. The Court was emphasizing the importance of arbitration for resolving disputes between labor and management and was cautioning the lower courts against usurping the functions of the arbitrator.

The Supreme Court also sustained an award of damages by a state court to an employer for a breach by the union of an implied no-strike provision in its contract. In *Teamsters Local 174 v. Lucas Flour Co.*[13] the Court did not consider the applicability of the Norris-LaGuardia Act because the employer's prayer for relief sought only damages and not specific performance of a no-strike obligation.

Twelve years after the decision in *Lucas Flour*, the Court decided in *Gateway Coal Co. v. United Mine Workers*,[14] that, in the absence of an express no-strike clause, an undertaking not to strike would be implied where the strike was over an otherwise arbitrable dispute. What distinguishes the Court's decision in *Gateway* from its earlier decision in *Lucas Flour* is the remedy which the Court sustained. The Court ruled that when an issue is arbitrated and the strike found to be illegal the Court would permit an injunction to enforce the arbitrable decision. Consequently, when the employer sought only damages, as in *Lucas Flour*, §4 posed no problem; but in *Gateway Coal* in which the employer sought an injunction, the Court was forced to form its decision within the constraints of §4. The Court relied on its earlier decision in *Boys Markets*[15] that the union could be enjoined from striking over a dispute which it was bound to arbitrate at the employer's behest.

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11. *Id.* at 456.
12. *Id.*
13. 369 U.S. 95 (1962).
14. 414 U.S. 368 (1974). *See* Wellington & Albert, *Statutory Interpretation and the Political Process: A Comment on Sinclair v. Atkinson*, 72 YALE L.J. 1547 (1963).
15. 398 U.S. 235 (1970).

The Supreme Court in *Boys Markets* recognized the injunction as an effective way of compelling arbitration.[16] The union had demanded that non-union employees cease performing tasks claimed by the union to be union work. The employer had refused, so the union struck, thereby violating the no-strike clause accompanying the arbitration provisions contained in the collective-bargaining contract.[17] The Supreme Court allowed an injunction under §301(a), since the strike was over a dispute which the union was bound to arbitrate at the employer's behest.[18] Earlier, in *Sinclair Refining Co. v. Atkinson*,[19] the Supreme Court had held that §4 proscribed a federal court's issuance of an injunction against work stoppages. The Court in *Boys Markets* decided to overrule its earlier decision in *Sinclair* in order to increase th employer's incentive to agree to submit grievances to arbitration in exchange for the union's undertaking to refrain from striking. The Court declared that the injunction is the most effective device to enforce no-strike obligations.[20]

The holding in *Boys Market* was narrow. It applied only to cases in which the strike had been precipitated by a dispute between union and management which was subject to binding arbitration under the provisions of the contract.[21] The question remained whether a federal court could grant an injunction when the only arbitrate issue was the breach of a promise not to strike.

What distinguishes the circumstances in *Buffalo Forge* from those in *Boys Markets* and *Gateway* is the fact that the sole arbitrable issue in the former was over the intepretation of the no-strike clause. The Supreme Court decided in *Buffalo Forge* that §4 of the Norris-LaGuardia Act prohibits a federal court from enjoining a strike not over an arbitrable grievance.[22] The Court acknowledged that striking over an arbitrable dispute would frustrate the arbitrable processes by which the parties had chosen to settle a dispute, but only to that extent was it held necessary to accomodate §4 of the Norris-LaGuardia Act to §301(a) of the Labor Management

16. *Id.* at 248-249.

17. *Id.* at 254.

18. *Id.* at 254-255.

19. 370 U.S. 195 (1962). In *Sinclair*, an employer sued to enjoin a strike by its employees allegedly in violation of a collective-bargaining agreement containing a no-strike clause. The Supreme Court decided an injunction was barred by §4 of the Norris-LaGuardia Act, which the Court held bars federal courts from issuing injunctions in any case growing out of any labor dispute.

20. 398 U.S. at 247-249.

21. *Id.* at 253-254. The Court expressly adopted the principles enunciated in the dissent in *Sinclair*, including the proposition that: "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 condition of his obtaining an injunction against the strike." 398 U.S. at 254, *quoting* 370 U.S. at 228 (emphasis in *Sinclair*).

22. 96 S. Ct. at 3146, 49 L. Ed. 2d at 1029.

Relations Act and to lift Norris-LaGuardia's ban against the issuance of injunctions in labor disputes.[23] The Court ruled that *Boys Markets* was not controlling, because the strike in *Buffalo Forge* was not over a dispute between the union and the employer that was even arguably subject to the arbitration provisions of the contract. Rather, the Court classified the strike as a sympathy strike which had neither the purpose nor the effect of evading an obligation to arbitrate.[24] Although the Court found that whether the sympathy strike violated the no-strike clause was an arbitrable issue, this dispute did not authorize an injunction.[25] The Court considered what would be essential to carry out the promises to arbitrate and to implement the private arrangements for the administration of the contract. The parties did not contract for a judicial preview of the fact. The Court reasoned, therefore, that their agreement to adjust or to arbitrate their differences themselves would be eviscerated if the district court had decided the contractual dispute at the preliminary injunction stage. The parties agreed to arbitrate, not to litigate. The collective-bargaining agreement did not provide for coercive action on any kind, let alone judicial injunctions, short of the final decision of the arbitrator.[26] The Court reasoned that issuance of an injunction in this situation would cut deeply into the Norris-LaGuardia Act's policy and make the courts potential participants in a wide range of arbitrable disputes under many collective-bargaining contracts. According to the Court, this would interfere with the factual and interpretive determinations that are subjects for the arbitrator.[27]

A strong dissent in *Buffalo Forge* argued that the literal wording of the Norris-LaGuardia Act should not have the controlling effect. The dissent asserted that the Norris-LaGuardia Act was intended to protect labor's ability to organize and bargain collectively and that this purpose is hardly undermined by an injunction enforcing an obligation that the union freely undertook.[28] But this argument ignores the thrust of *Boys Markets*. The

23. 96 S. Ct. at 3148, 49 L. Ed. 2d at 1031.

24. This decision is in accord with decisions of the Fifth and Sixth Circuits: Plain Dealer Pub. Co. v. Cleveland Typographical Union No. 53, 520 F.2d 1220 (6th Cir. 1975); Amstar Corp. v. Amalgamated Meat Cutters, 468 F.2d 1372 (5th Cir. 1972).

25. The opposite result could embroil the district courts in massive preliminary injunction litigation. In 1972, the most recent year for which comprehensive data have been published, more that 21,000 workers in the United States were covered under more than 150,000 collective-bargaining agreements. BUREAU OF LABOR STATISTICS, DIRECTORY OF NATIONAL UNIONS AND EMPLOYEE ASSOCIATIONS 87-88 (1973).

26. 96 S. Ct. at 3149, 49 L. Ed. 2d at 1032.

27. 96 S. Ct. at 3148, 49 L. Ed. 2d at 1032.

28. In *Boys Markets* the Court quoted with approval the following statement by the neutral members of the Special Atkinson-Sinclair Committee of the ABA Labor Relations Law Section: "'Any proposal which would subject unions to injunctive relief must take account of the Norris-LaGuardia Act and the opposition expressed in that Act to the issuing of injunctions in labor disputes. Nevertheless, the reasons behind the Norris-LaGuardia Act

purpose of restoring the jurisdiction to the federal courts was to keep the arbitrator clear of interference and anticipation. If jurisdiction were to be restored where the only arbitrable issue was breach of a promise not to strike, §301 would impinge upon arbitration by interim anticipation of the award. The dissent asserted that an injunction would give the employer an incentive to enter into collective bargaining agreements since the union's quid pro quo, the no-strike clause, in the collective-bargaining agreement would be enforced.[29] But this claim overlooks the fact that it is the arbitrator's responsibility to decide whether the strike violated the no-strike clause. If the arbitrator decides that the strike violates the agreement, the arbitrator will fashion the employer's relief. This gives the employer sufficient incentive to enter into collective-bargaining agreements.

The Supreme Court in *Buffalo Forge* reached a decision in line with the Court's previous decisions by keeping the arbitrator clear of interference and anticipation. The Court makes it clear that federal courts may not issue injunctions pending the arbitrator's decision regardless of the outcome. It is the arbitrator's responsibility to fashion relief. The Court's decision in *Boys Markets* dictated that the Court fashion its decision according to whether an injunction would impede or help arbitration. Since an injunction would impede arbitration by emasculating the effect of the arbitrator's decision, the Court correctly denied jurisdiction to federal courts to enjoin these strikes.

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seem scarely applicable to the situation . . . [in which a strike in violation of a collective-bargaining agreement is enjoined]. The Act was passed primarily because of wide spread dissatisfaction with the tendency of judges to enjoin concerted activities in accordance with "doctrines of tort law which made the lawfulness of a strike depend upon judicial views of social and economic policy." Where an injunction is used against a strike in breach of contract, the union is not subjected in this fashion to judicially created limitations on its freedom of action but is simply compelled to comply with limitations to which it has previously agreed. Moreover, where the underlying dispute is arbitrable, the union is not deprived of any practicable means of pressing its claim but is only required to submit the dispute to the impartial tribunal that it has agreed to establish for this purpose.'" 398 U.S. at 253 n.22, *quoting* REPORT OF SPECIAL ATKINSON-SINCLAIR COMMITTEE, A.B.A. LABOR RELATIONS LAW SECTION — PROCEEDINGS 242 (1963).

29. 96 S. Ct. at 3152, 49 L. Ed. 2d at 1036.