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Labor Law - Federal Courts - Labor Management Relations Act, 1947 - Suits under § 301(a) to Enjoin Strikes in Breach of a No-strike Agreement

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the effect of a procedural rule of law which eliminates the issue of sanity from the criminal proceeding until raised by the defendant. To this extent, Gerade and Iacobino have been overruled.

The present case also produces evidence of a significant trend which has not yet attained the majority status of the court. Two of the Justices of the court have expressed the opinion that insanity should no longer be treated as a defense. Instead, sanity should be regarded as an element of the crime, with the burden of proving sanity beyond a reasonable doubt, resting with the commonwealth.

And, finally, mention must be made of what can only be described as a speculative trend regarding future opinions of Justice Roberts concerning the appropriate test for insanity. It would appear, from his opinion in the Vogel case, as well as his opinions in such related decisions as Ahearn, that his future opinions will be in the vanguard of those which attack the M'Naghten test as an antiquated relic of the dark ages.

Ronald G. Mokowski

LABOR LAW—FEDERAL COURTS—LABOR MANAGEMENT RELATIONS ACT, 1947—SUITS UNDER § 301(a) TO ENJOIN STRIKES IN BREACH OF A NO-STRIKE AGREEMENT—The Supreme Court of the United States has held that a federal court may enjoin a strike which violates the no-strike provision of a collective bargaining agreement if that agreement contains a mandatory grievance-arbitration procedure.


In the Boys Market case, the Supreme Court of the United States once again considered the effect of § 4 of the Norris-LaGuardia Act on an

1. Section 4 provides:
   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 or 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;
   (e) Giving publicity to the existence of, or the facts involved in, any labor dispute,
action brought in federal court under § 301(a) of the Labor Management Relations Act, 1947\(^2\) to enjoin a strike which violates the no-strike clause of a labor contract.

A collective bargaining agreement between Local 770 of the Retail Clerk’s Union and the Boys Markets, Inc. provided, *inter alia*, that there would be no strikes and that disputes involving the interpretation or application of their agreement could be processed through a grievance and arbitration procedure, both parties being bound by any determination there reached.\(^3\) Nevertheless, during the term of that agreement the union engaged in a strike and picketed the employer over a griev-

...
ance concerning the alleged performance of bargaining unit work by excluded personnel, notwithstanding the employer's offer to submit the dispute to arbitration.

Boys Markets, Inc. obtained a temporary restraining order against the strike from the state court and an order for the union to show cause why a preliminary injunction should not be granted. Thereupon, the union removed the case to federal district court and made a motion to quash the state court's temporary restraining order. The district court found that the grievance was arbitrable under the parties' written agreement and, consequently, ordered arbitration of the underlying dispute and enjoined the strike and picketing. The union appealed.

Considering the case controlled by *Sinclair Refining Co. v. Atkinson*, in which the Supreme Court, seven years previously, held that the anti-injunction provisions of the Norris-LaGuardia Act prevent a federal court from enjoining such a strike, the Court of Appeals for the Ninth Circuit reversed the lower court's grant of injunctive relief. The Boys Markets, Inc. appealed to the Supreme Court of the United States which granted certiorari, taking a welcomed opportunity to reexamine the *Sinclair* holding.

Concluding that *Sinclair* had been erroneously decided in 1962 and that subsequent events had undermined its validity, a 5-2 majority of the Court overruled that decision and reversed the judgment of the court of appeals. It held that the Norris-LaGuardia Act does not preclude a § 301 injunction by a federal court to enforce a no-strike clause of a labor agreement if that agreement contains a mandatory grievance adjustment or arbitration procedure. The Court, however, was unwilling to make this remedy available without qualification. For the guid-

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4. *370 U.S. 195 (1962).*
7. *Justice Stewart, joined by Justices Harlan and Brennan, concurring in *Avco Corp. v. Aero Lodge No. 733, International Association of Machinists and Aerospace Workers, 390 U.S. 557, 562 (1968)*, expressed the view that "the Court expressly reserves decision on the effect of *Sinclair* in the circumstances presented by this case. The Court will, no doubt, have an opportunity to reconsider the scope and continuing validity of *Sinclair* upon an appropriate future occasion." *Boys Markets* provided that "appropriate future occasion."
8. Justice Brennan, who wrote the dissent in *Sinclair*, wrote for the majority in *Boys Markets*. Justices Douglas and Harlan, who also dissented in *Sinclair*, along with Justice Stewart (who, in a separate concurring opinion, apologized for his majority role in *Sinclair*) and Chief Justice Berger joined Justice Brennan to make the majority. Justice Black, who wrote for the majority in *Sinclair*, was joined by Justice White who also voted with the majority in *Sinclair*. Justice Frankfurter took no part in the *Boys Markets* decision.
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ance of district courts in determining whether to grant injunctive relief, the principles set forth in the dissenting opinion of *Sinclair* were adopted, i.e., there can be no injunctive relief unless the case is one in which an injunction would be appropriate despite the Norris-LaGuardia Act; both parties must be contractually bound under the labor agreement to arbitrate the grievance which gave rise to the strike; as a condition precedent to obtaining an injunction, the employer should be ordered to arbitrate the dispute; and the issuance of an injunction must be warranted under the ordinary principles of equity.

Prior to the *Sinclair* case, the Supreme Court had not been squarely faced with the question of whether § 4 of the Norris-LaGuardia Act prevented federal courts from granting injunctions, under § 301 of the Labor Management Relations Act, against strikes over arbitrable grievances. However, in a number of pre-*Sinclair* cases, it had worked out "accommodations" with the Norris-LaGuardia Act so as to permit federal court injunctions under the Railway Labor Act against strikes over arbitrable grievances,

9 under the National Labor Relations Act over racial discrimination,

10 and even under § 301 of that Act to enforce agreements to arbitrate.

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In suits praying for enforcement of arbitration clauses, § 301 was given a broad interpretation by the Court. The first major decision in this area was *Textile Workers Union of America v. Lincoln Mills* where a union brought a § 301 action in federal court for the specific performance of an arbitration clause. The Supreme Court, declaring that such a provision could be specifically enforced by mandatory injunction, espoused the now famous *quid pro quo* doctrine that an agreement to arbitrate grievance disputes is the necessary corollary of an agreement not to strike. In addition to holding that § 301 created a federal substantive right to enforce a collective agreement, the majority also concluded that the anti-injunction provisions of the Norris-LaGuardia Act did not prevent the exercise of jurisdiction specifically to enforce the arbitration clause of an agreement.

9. The Railway Labor Act, 45 U.S.C.A. § 151 et. seq. (1954), originally enacted in 1926, is designed to protect the right of self-organization and to promote collective bargaining and other devices for the peaceful settlement of labor disputes in "carrier" industries which are subject to the Interstate Commerce Act.


13. *Id.*
The *Lincoln Mills* case was fortified in 1960 when the Court decided three separate cases, collectively referred to as the *Steelworker trilogy*, wherein repeated references were made to the *quid pro quo* existing between a no-strike clause and an arbitration clause in a labor contract. An even further extension was made in *Local 174, Teamsters, Chauffeurs, Warehousemen & Helpers of America v. Lucas Flour Company*, where the Courts said that a pledge not to strike over a grievance may properly be implied from an express agreement in the contract to arbitrate such a dispute.

When the *Sinclair* case presented the Supreme Court with an occasion to make the next logical extension to these cases, it refused and was unwilling to make any further "accommodations" with the Norris-LaGuardia Act. By a 5-3 bench, the Court affirmed the dismissal of an employer suit for an injunction against a work stoppage in violation of a no-strike pledge, where the issues which caused the strike were arbitrable under the terms of the parties' collective agreement. The majority determined the matter to be a "labor dispute" within the scope of the Norris-LaGuardia Act and, therefore, protected from federal court injunction by § 4. Mr. Justice Black held that while it was congressional policy to encourage the resolution of labor disputes through arbitration rather than economic warfare, the Congress did not intend to go so far with that policy as to repeal the Norris-LaGuardia Act when § 301 was enacted. This, he said, was clear from the language of that section as well as its legislative history.

The *Sinclair* decision was followed by much scholarly criticism as well as a plea by the American Bar Association for Congress to modify § 4 of the Norris-LaGuardia Act to abate the consequences of *Sinclair*.

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15. 369 U.S. 95 (1962).
18. "[T]he American Bar Association recommends that the Congress enact a modifica-
Basically, the disenchantment with the case had been the inequity fostered by it. On the one hand, the court held, beginning with *Lincoln Mills*, that an employer's agreement to arbitrate disputes is specifically enforceable because it is the *quid pro quo* for the union's pledge not to strike. But on the other hand, in *Sinclair* the union's agreement not to strike was insulated from federal court injunction by § 4 of the Norris-LaGuardia Act and, consequently, not specifically enforceable. Thus, the Supreme Court, over a period of some five years between the *Lincoln Mills* case and the *Sinclair* case granted unions their *quid* but denied employers their *pro quo*.10

Prior to *Sinclair*, the Court held that state courts have concurrent jurisdiction with federal courts over suits to enforce labor contracts20 but must apply the law developed by the federal courts because the "dimensions of § 301 require the conclusion that substantive principles of federal labor law must be paramount in the area covered by the statute."21 Therefore, the immediate effect of *Sinclair* was to deny employers a federal forum in § 301 cases where they prayed for injunctive relief against strikes in violation of no-strike agreements and thus restricted them to bringing such suits in state courts.22

In 1968, however, the effectiveness of the state forum was substantially diluted by the Supreme Court's determination in *Avco Corp. v. Aero Lodge No. 735, International Association of Machinists and Aerospace Workers*23 and the need to reconsider the Sinclair case was made even more apparent. A unanimous Court held in *Avco* that a union could remove a § 301 suit, originally brought in a state court, to a federal district court. After that decision, legal writers once again took up the attack on *Sinclair*, pointing out the inconsistency of the net

result of the two cases with the congressional purpose and intent of § 301.24 The majority in Boys Markets was also quick to recognize the undesirable practical operation of Avco with Sinclair. The court stated:

the decision in Avco, viewed in the context of Lincoln Mills and its progeny, has produced an anomalous situation which, in our view, makes urgent the reconsideration of Sinclair. The principal practical effect of Avco and Sinclair taken together is nothing less than to oust state courts of jurisdiction in § 301(a) suits where injunctive relief is sought for breach of a no-strike obligation. Union defendants can, as a matter of course, obtain removal to a federal court, and there is obviously a compelling incentive for them to do so in order to gain the advantage of the strictures upon injunctive relief which Sinclair imposes on federal courts. The sanctioning of this practice, however, is wholly inconsistent with our conclusion in Dowd Box that the congressional purpose embodied in § 301(a) was to supplement, and not to encroach upon the pre-existing jurisdiction of the state courts. It is ironic indeed that the very provision which Congress clearly intended to provide additional remedies for breach of collective bargaining agreements has been employed to displace previously existing state remedies. We are not at liberty thus to depart from clearly expressed congressional policy to the contrary.

... the very purpose of arbitration procedures is to provide a mechanism for the expeditious settlements of industrial disputes without resort to strikes, lock-outs, or other self-help measures. This basic purpose is obviously largely undercut if there is no immediate, effective remedy for those very tactics which arbitration is designed to obviate. Thus because Sinclair, in the aftermath of Avco, casts serious doubt upon the effective enforcement of a vital element of stable labor-management relations—arbitration agreements with the attendant no-strike obligations—we conclude that Sinclair does not make a viable contribution to federal labor policy.25

Clearly, the Sinclair case was erroneously decided, and its reconsideration, particularly after Avco, was compelled. It is submitted, however,

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25. Boys Markets, 398 U.S. at 244-245, 249.
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that a mere overruling of that case does not satisfy the congressional commitment to labor peace and optimum stability in labor relations expressed by the Labor Management Relations Act.

In virtually every business in the United States today, collective bargaining is an arm's length process. Indeed, the day of the sweat-shop, when concerted labor activity was unprotected and management's overwhelming economic power was without effective counterbalance, is long gone. Labor and management each represent a substantial force in our contemporary society and labor's bargaining position is eminently stronger than management's in many important respects. A collective agreement, reached as a result of negotiations between labor and management, represents a contribution by each toward labor peace for the term of that agreement, and should be enforceable, in toto, under § 301 to encourage future good faith bargaining and to avoid unchecked economic warfare during the prescribed period of the contract.

The only real promise a union can give in return for the many promises in labor agreement is the one promise that it will provide its services during a certain term, or, conversely, that it will not withdraw its services during the same period. It is the one thing a union has to exchange and the sole assurance for which an employer bargains. A no-strike commitment should, therefore, be implicit in a valid labor agreement for it is the only consideration which can afford the mutuality inherent in any bilateral contract. Similarly, the promise not to strike must not be a phantom—it must be fully enforceable whether or not it emerges from an agreement which also contains an arbitration clause.

Any no-strike pledge, express or implied, should be treated as unequivocal (unless expressly modified or deleted by the parties in their written agreement), effective and conclusive on the union for the term of the agreement in the same manner as the obligation of the employer to pay for the services of the members of the bargaining unit. This result does not place any undue hardship on a union. The Labor Management Relations Act and the law of contracts can afford labor and management sufficient protection for their respective legal and bargained-for rights. While a negotiated grievance-arbitration procedure is perhaps administratively more convenient than a court of law for the redress of grievances, its remedy power is no greater. It is the choice of the negotiating parties which determines the method by which disputes
are to be resolved under their collective agreement. However, this choice should not affect other rights and obligations created by the same agreement, including the union's express or implied promise not to strike. Indeed, if a pledge not to strike is unenforceable at law, there can be no effective bargaining for labor peace.

Richard I. Thomas